



San Francisco Law Library

No.

Presented by

.....

EXTRACT FROM BY-LAWS.

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. A party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.

769
No. 2178

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAKE M. SHANK,

Plaintiff in Error,


vs.

THE GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the District of Idaho.

FILED
SEP 30 1912



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

Records of U.S. Circuit Court
of appeals

769

No. 2178

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAKE M. SHANK,

Plaintiff in Error,

VS.

THE GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the District of Idaho.

INDEX TO PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Amended Complaint, Second.....	1
Answer	7
Assignment of Errors.....	59
Attorneys, Names and Addresses of.....	1
Bill of Exceptions.....	15
Bond	61
Citation	65
Clerk's Certificate to Transcript of Record.....	67
Exceptions, Bill of.....	15
Judgment	13
Names and Addresses of Attorneys.....	1
Order Allowing Writ of Error.....	60
Order for Transmission of Exhibits.....	66
Petition for Writ of Error.....	58
Return to Writ of Error.....	67
Second Amended Complaint.....	1
TESTIMONY ON BEHALF OF PLAINTIFF:	
BIRD, ELMER.....	16
Cross-examination	20
Redirect Examination.....	20
Recross-examination	21
Redirect Examination	22

Index.	Page
TESTIMONY ON BEHALF OF PLAIN-	
TIFF—Continued :	
CHAMBERLAIN, F. E.....	42
Cross-examination	43
COKER, CHARLES	40
Cross-examination	41
FREEDHEIN, H. H.....	35
Cross-examination	37
HARVEY, W. H.....	23
Cross-examination	26
McCLUSKEY, A. F.....	30
Cross-examination	33
SHANK, JAKE M.....	15
Recalled	44
Cross-examination	47
Redirect Examination.....	54
Writ of Error.....	63

[Names and Addresses of Attorneys.]

W. P. GUTHRIE, Esq., Twin Falls, Idaho,
ALFRED A. FRASER, Esq., Boise, Idaho,
Attorneys for Appellant.

J. F. NUGENT, Esq.,
S. H. HAYS, Esq., Boise, Idaho,
Attorneys for Appellee.

*In the Circuit Court of the United States, Central
Division of the District of Idaho.*

JAKE M. SHANK,

Plaintiff,

vs.

GREAT SHOSHONE & TWIN FALLS WATER
POWER COMPANY,

Defendant.

Second Amended Complaint.

Comes now the plaintiff, and for cause of action
against the defendant alleges:

1.

That the plaintiff is a resident and citizen of the
State of Idaho, residing in Twin Falls County in said
State, and that the defendant, the Great Shoshone
& Twin Falls Water Power Company, is a corpora-
tion organized and existing under and by virtue of
the laws of the State of Delaware, and a citizen of
the State of Delaware, and doing business in the
State of Idaho, and in the county of Twin Falls in
this State.

2.

That the matter in dispute in this action exceeds,

exclusive of interest and costs, the sum or value of Two Thousand Dollars (\$2,000).

3.

That the defendant was, on the eighth day of August, 1910, the owner of, and did operate, manage and control, a certain electric light and power company, with its machinery, poles, wires and appliances in said Twin Falls County, State of Idaho, and the defendant on said date, in said county, in the pursuit of its said business, had the ownership, management and control of a certain line of [1*] electric wires extending through and along said public roads and highways in said county, one section or portion of said line extending through and along that certain public road or highway lying along and adjacent to the following described land, to wit: The southeast quarter of section thirty-one (31), township nine (9), range fifteen (15) east of the Boise meridian, the lands of said plaintiff herein, along which said road or highway said line was suspended by poles at about the height of thirty (30) feet from the ground, except at the point on said highway where the accident hereafter referred to occurred, and at said point said line was suspended at a height of only twenty-seven (27) feet and was suspended so close and adjacent to said travelled or center portion of the highway as to render it, said highway, unsafe and dangerous to persons travelling thereon.

4.

That said defendant on said eighth day of August, 1910, and for a time prior thereto, had been ac-

*Page number appearing at foot of page of original certified Record.

customed to, and did use said line of wires for the purpose of furnishing light and power to buildings and for other purposes, and to that end was accustomed, and for some time had been accustomed, to pass, and on *said did*, pass through said line of wires, through each and every wire of said line, a strong and powerful current of electricity, dangerous to the life of any human being who might come near to or in contact therewith.

5.

That at the time the defendant so placed its wires along said road or highway it well knew that persons would travel over and along said highway adjacent to and in close proximity of said wires, and it was the duty of said defendant to keep said wires safely, securely and completely insulated, and suspended at a height of not less than thirty-five (35) feet from the ground, and to use every safeguard and device so that persons travelling along and over said [2] highway should not be injured by contact therewith, or by the escape of electricity therefrom; but that said defendant notwithstanding such knowledge and disregarding its duty in the premises carelessly and negligently maintained the said wires at a height of twenty-seven (27) feet from the ground, and carelessly and negligently suspended the said wires so close to the center or travelled portion of the highway as to make it unsafe and dangerous to persons travelling thereon, and carelessly and negligently protected the same by defective insulation, and carelessly and negligently failed to protect and cover said wires with safe and sufficient insulating material.

6.

The plaintiff complains that on the day and date aforesaid, while the plaintiff was lawfully travelling and driving along and over said public highway a certain conveyance or vehicle, known as a haystacker or derrick, said haystacker having a tower or derrick projecting thereon to a height of about twenty-seven (27) feet, with a wire cable attached thereto and running from the top of said derrick to the bottom of the platform of said haystacker; that on said date and while said haystacker was being driven over and hauled along said highway adjacent to the lands of plaintiff hereinbefore described, the top of said derrick came in close proximity to the wires of said defendant, which at said time were heavily charged with electricity by the defendant, its agents and servants, with a strong and powerful current of electricity, dangerous to the person of any person who might come near to or in contact therewith, said current of electricity escaped from said wires of the defendant over to and upon said derrick and haystacker, or to the wire cable attached thereto, and while said plaintiff was at the time walking along the side of said haystacker and in close proximity to said wire cable, and without any fault, carelessness or negligence upon his part, he [3] received said current of electricity into his body, through and by means of which he, the said plaintiff, was greatly shocked, burned, hurt and wounded, maimed, sick, sore and disordered and that he suffered severe pain, both physically and mentally, by reason of said shock, and that the flesh on his hands was burned, blistered

and destroyed to such an extent as to render one of his hands useless; that the flesh was burned or torn off the toes of his feet; part of two toes being torn off the left foot and the bottom of the right foot burned out and the little toe torn off and part of another toe taken off; that said injuries received by plaintiff are permanent, and his entire nervous system, by reason of said shock, is unbalanced, causing plaintiff much discomfort; that plaintiff is, and will be, unable to do any hard work in the future, and that before the accident he was a strong, healthy man. That vehicles or haystackers the same as or similar in character and construction to the one heretofore mentioned and described, being in common use in the immediate vicinity where said accident occurred, and in the surrounding and adjacent country thereto, and being frequently transported from place to place along and over the highway where said accident occurred in the same manner and method as the one mentioned herein was being transported at the time of said accident, and the fact that said haystackers were being so transported along and over the said highway mentioned herein was a matter of general knowledge in the community and vicinity where said accident occurred at the time of, and long prior to the erection of said poles and wires by said defendant. That plaintiff has been damaged by reason of said injuries, received as aforesaid, in the sum of Thirty Thousand Dollars (\$30,000); that by reason of said injuries so as aforesaid received by the plaintiff, he was confined to his home and bed for a period of two (2) months, and was compelled

to expend and did expend for necessary nursing, medical treatment and doctor's bills, the sum of Seven Hundred and Sixty Dollars (\$760.00). [4]

WHEREFORE, plaintiff prays damages against the defendant for the sum of Thirty Thousand Seven Hundred Sixty Dollars (\$30,760.00) and for costs of suit and such other relief as he may be entitled to.

W. P. GUTHRIE,

Attorney for Plaintiff, Residing at Twin Falls,
Idaho.

ALFRED A. FRASER,

Attorney for Plaintiff, Residing at Boise, Idaho.

State of Idaho,

County of Ada,—ss.

Alfred A. Fraser, being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff herein; that he has read the foregoing second amended complaint and knows the contents thereof and that he believes the facts stated therein to be true.

The reason this verification is made by the attorney and not by the plaintiff is that the said plaintiff is absent from said Ada County, the county where his said attorney resides.

ALFRED A. FRASER.

Subscribed and sworn to before me this 3d day of October, 1911.

[Notarial Seal]

D. T. MILLER,

Notary Public.

[Endorsed]: Filed October 3, 1911. A. L. Richardson, Clerk. [5]

*In the Circuit Court of the United States, Southern
Division, District of Idaho.*

JAKE M. SHANK,

Plaintiff,

vs.

GREAT SHOSHONE & TWIN FALLS WATER
POWER COMPANY, a Corporation,
Defendant.

Answer.

Comes now the defendant, answering the second amended complaint herein, and says:

1.

Admits that it is a corporation organized and existing under the laws of the State of Delaware and duly authorized to do business in the State of Idaho.

2.

Admits that on the 8th day of August, 1910, and long prior to and since said date, defendant was the owner of and did operate, manage and control a certain electric light and power company with its poles, wires and appliances in Twin Falls County, State of Idaho, and that defendant at said time and times, and in said county, had the ownership, management and control of a certain line of electric wires extending through and along the public roads and highways in said county, and that one section or portion of said line extended along that certain public road or highway, along and adjacent to the lands described in the complaint.

3.

Admits that said wires were suspended by poles at

the height of thirty feet or more from the ground.
[6]

But defendant states that it has no knowledge, information or belief sufficient to enable it to answer as to the height of the said wires at the place of the accident referred to in the complaint for the reason that the exact place of the occurrence of said accident is unknown to defendant and that owing to variations in the surface of the ground, the height of the said wires from the surface of the ground varies at different places, and affiant therefore denies that said wire mentioned in the complaint was at a distance of only twenty-seven (27) feet from the surface of the earth or that it was any less distance than thirty (30) feet from the surface of the earth at the place of said accident.

3.

Defendant denies that said line was suspended close to or adjacent to the traveled or center portion of the said highway or in such manner as to render said highway unsafe or dangerous to persons traveling thereon or to any persons whatever, but, on the contrary, defendant avers that said line was constructed along the north line or boundary of said highway and within one (1) foot thereof in such manner and at such places as not to incommode the public use of the road.

Defendant further avers that the place of accident was upon a county road or highway and not within the limits of any city, town or village, either incorporated or unincorporated.

Defendant admits that at the time alleged in the

complaint that defendant was using said line of wires for the purpose of furnishing light and power to buildings and for other purposes for the use of many hundreds of persons, and was accustomed to and did pass through said line of wires a strong and powerful current of electricity that might be dangerous to persons coming in contact therewith but not otherwise. [7]

4.

Defendant denies that it knew or had cause to know at the time it placed its wires at the place alleged in the complaint that persons would travel over and along said highway adjacent to or in close proximity to said wires.

Denies that it was the duty of defendant to keep said wires insulated in any manner or at all, and denies that it was the duty of defendant to keep said wires suspended at a height of not less than thirty-five (35) feet from the ground, or at any height in excess of eighteen (18) feet above the ground.

Denies that it was the duty of defendant to use any safeguard or device to prevent the injury of persons traveling along said highway.

Denies that defendant disregarded its duty in the premises or that it carelessly or negligently suspended said wires at a height of twenty-seven (27) feet or at any dangerous height, either so close to or so near to the center or traveled portion of the highway as to make it unsafe or dangerous to persons traveling thereon, or that it suspended said wires either near or close to the center or the traveled portion of the highway at the point alleged in the complaint.

Denies that defendant carelessly or negligently protected said wires by defective insulation, or that it carelessly or negligently failed to protect said wires with safe and sufficient insulating material.

5.

That except as herein specifically denied, defendant has no knowledge, information or belief sufficient to enable it to answer the allegations contained in paragraph six of the second amended complaint herein and therefore, denies each and every of the allegations [8] therein contained (except as hereinbefore specifically admitted), and further denies that *defendant* was injured by bringing said haystacker in close proximity to the wires of defendant. Denies that said accident occurred without fault, carelessness or negligence upon the part of plaintiff.

Defendant denies that vehicles or haystackers the same as or similar in character or construction to the one mentioned in the complaint were in common use in the immediate vicinity where said accident occurred, or in the surrounding or adjacent country thereto, or that they were frequently or otherwise or at all transported from place to place along or over the highway where the accident occurred, in the same manner or method as the one mentioned in the complaint or otherwise.

Denies that the fact of said haystacker being so transported along said highway was a matter of general knowledge or otherwise, in the community or vicinity where said accident occurred either at the time of or prior to the erection of defendant's poles and wires, or any other time.

Denies that *defendant* has been damaged in the sum of Thirty Thousand (\$30,000.00) Dollars, or in any other sum, or at all, and that defendant has no knowledge, information or belief sufficient to enable it to answer whether plaintiff has paid out any sum whatever for nursing, medical treatment and doctor's bills, and therefore denies the same.

Further answering, defendant alleges that said wires mentioned in the complaint are strung on poles along the public highway in a proper, sufficient, careful and workmanlike manner, in front of and adjacent to the farm of plaintiff at the point where the accident occurred; that the poles are set along the north boundary of the said highway as hereinbefore alleged.

That at the time of the accident alleged, and for a long time [9] prior thereto, plaintiff well knew and had notice and knowledge of the location of said poles and wires, and of the fact that said wires carried a powerful and dangerous current of electricity.

That at the time of the accident alleged in the complaint, said plaintiff was engaged in transporting an unusual structure or machine of great and unusual height called a haystacker, along said highway, said structure being of a height of twenty-seven (27) feet or over, and that while so transporting said structure or machine, as aforesaid, plaintiff carelessly, recklessly and negligently caused some part of said haystacker to come in contact with the wires aforesaid and that plaintiff, without due or any care or caution, negligently, carelessly and recklessly brought himself in contact with said haystacker, or some part

thereof at said time of contact, and that such injuries or damage as plaintiff may have suffered, if any, were caused by his own careless, reckless and negligent acts as aforesaid.

WHEREFORE, defendant prays that it be hence dismissed and that it have judgment for costs.

S. H. HAYS,

Attorney for Defendant.

State of Idaho,

County of Ada,—ss.

S. H. Hays, being first duly sworn, deposes and says that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be on information or belief, and that as to those matters he believes it to be true.

That this verification is made by affiant, who is the attorney for the defendant herein, for the reason that all of the officers of the defendant are absent from Ada County, where affiant resides.

S. H. HAYS.

Subscribed and sworn to before me this 16th day of November, 1911.

[Notarial Seal]

P. MARTIN,
Notary Public.

[Endorsed]: Filed Nov. 16, 1911. A. L. Richardson, Clerk. [10]

*In the District Court of the United States, Southern
Division, of the District of Idaho.*

JAKE M. SHANK,

Plaintiff,

vs.

GREAT SHOSHONE & TWIN FALLS WATER
POWER COMPANY, a Corporation,
Defendant.

Judgment.

The above-entitled action came on regularly for trial on the 1st day of March, 1912, the plaintiff appearing by his counsel, A. A. Fraser, Esq., and W. P. Guthrie, Esq., and the defendant by its attorneys, S. H. Hays, Esq., and J. F. Nugent, Esq.

A jury of twelve persons was regularly impaneled and sworn to try the case. Witnesses on behalf of the plaintiff were sworn and examined and the plaintiff rested, and thereupon the defendant, by its counsel, moved the Court for a nonsuit upon the following grounds:

I.

Because the plaintiff has failed to show that defendant company was guilty of any negligence causing the injuries received by plaintiff.

II.

Because the undisputed testimony of plaintiff himself shows that he was chargeable with contributory negligence, precluding his recovery.

III.

Because the uncontradicted evidence introduced

by plaintiff shows that he was chargeable with contributory negligence, barring [11] his recovery.

IV.

Because it appears from the uncontradicted evidence on the part of the plaintiff that he was a trespasser on the property of the defendant company at the time he received the injuries complained of.

Which said motion was argued by counsel for the respective parties and after being duly considered by the Court was by the Court sustained and the said jury discharged from the further consideration of said cause.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid, it is ordered and adjudged that said plaintiff take nothing by his action herein, and that he go hence without day, and that the Great Shoshone & Twin Falls Water Power Company, a corporation, the defendant herein, do have and recover of and from said plaintiff, Jake M. Shank, its costs and disbursements herein expended and taxed in the sum of \$560.17.

Judgment entered March 2, 1912.

[Endorsed]: Filed March 2, 1912. A. L. Richardson, Clerk. [12]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

JAKE M. SHANK,

Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER
POWER COMPANY,

Defendant.

Bill of Exceptions.

Be it remembered that on the first day of March, 1912, the above-entitled action came on to be heard before the court, and a jury, duly empaneled, W. P. Guthrie and Alfred A. Fraser appearing as counsel for the plaintiff, and S. H. Hays and F. J. Nugent as counsel for the defendant; and that thereupon the following proceedings were had:

[Testimony of Jake M. Shank, on His Own Behalf.]

JAKE M. SHANK, called and sworn as a witness on his own behalf, testifies as follows:

Direct Examination.

I am the plaintiff in this action and reside at Twin Falls. On the 8th day of August, 1910, I was living on my ranch one-half mile east of Buhl. My ranch borders upon the highway. I know where the line of electric light wires and poles of the Great Shoshone & Twin Falls Water Power Co. runs along in this vicinity. The poles are set just outside my fence line running east and west in the road. I received an injury on that date by receiving a shock

(Testimony of Jake M. Shank.)

of electricity from their wires at a point probably six [13] hundred feet from the southeast corner of the place. This was on the 8th day of August, 1910. I was at the scene of the accident two weeks ago to-day or yesterday, in company with Mr. George Harlan, Mr. Bybee, W. H. Harvey, and two or three other parties. Mr. Bird was there the week before. I was with Mr. Bird at that time. At the time I was there with Mr. Bird the wires and poles were in the same condition, as far as I could see, as they were at the time I received the accident. There hadn't been any new poles set that I could see on the line and the line hadn't been heightened any. As far as the wires were concerned, they were the same as on the date of the accident and during all the times that I had been there that same condition existed.

[Testimony of Elmer Bird, for Plaintiff.]

ELMER BIRD, a witness called and sworn on behalf of the plaintiff, testified as follows:

Direct Examination.

I reside at Buhl and have lived there nearly fourteen months. My business or occupation is that of a civil engineer. The first three years of my college course was electrical work. In a theoretical way I am familiar with electrical engineering work and I am a civil engineer.

(A certain tracing was thereupon marked Plaintiff's Exhibit "A" for identification and the same shown to the witness.) Witness testifies in regard to Exhibit "A" as follows:

(Testimony of Elmer Bird.)

That is a tracing, the result of our work when I visited the place in company with Mr. Shank and made a survey; the result of my work in surveying the point of the accident, the height of the wires and the height of the poles, the location of the bridge and also the location of the wheel tracks on the outside portion of the road. There were present with me when I made this survey, Mr. Shank, the plaintiff, Mr. Guthrie, Mr. Harvey, and some man [14] that was working for Mr. Shank. Mr. Shank pointed out to me the place where he claimed the accident took place. I made this from an actual measurement upon the ground.

(Said plat, Exhibit "A," was thereupon admitted in evidence and the word "Admitted" was stamped thereon.) Witness continuing, testified as follows in regard to said exhibit:

It was drawn to a scale of ten feet to the inch.

(At this time counsel for the plaintiff produced a paper marked Plaintiff's Exhibit "B" for identification and the witness continuing, testified in regard to said Plaintiff's Exhibit "B" as follows:)

That is a profile of the ground surface in relation to the height of the poles and wires at the point of the accident. It was made by myself from actual measurements taken by me on the ground. It is a correct representation of the measurements which I made with one exception, that there is no sag considered in the wires. I considered the wires in a straight line between the top of each insulator, because I couldn't determine the sag of the wire; that

(Testimony of Elmer Bird.)

is, the sag of the wires as they actually existed is not shown here. It is shown in a straight line.

(Whereupon Plaintiff's Exhibit "B" for identification was offered in evidence, admitted in evidence and the word "Admitted" was stamped thereon. And the witness continuing, testified as follows:)

Plaintiff's Exhibit "B" is supposed to represent the ground line of the road. This rough line here (indicating) represents the ground line down the road. The elevation is drawn to scale. It is on a definite scale straight through. The red lines at the top represent your neutral wire, and these are the two bottom wires the electric power wires. I made a measurement of the height of these wires from the ground at different points. At point A the [15] wire was practically $291\frac{1}{2}$ feet from the ground according to scale. At point B it was just about thirty feet and six inches, I should judge from the scale. At point X the wire was 27 feet and six inches, that is not considering the sag. If the wire were drawn straight across at that point the height would be 27 feet and six inches. The point C is the timber bridge across an irrigating ditch at that point. The depression which is shown at point C is the ground line at the bottom of the ditch. There is quite an elevation of the ground from point A to point X. It is going down hill pretty rapidly there, practically five feet in drop in about 125 feet of distance. In other words, the point X would be about five feet higher than the point A; the contour of the ground, the elevation at

(Testimony of Elmer Bird.)

that point. The three little wires as shown on the top of exhibit "A" represent the three wire transmission line of the power company. The line marked A-A is the line of the wheel tracks on that side of the road at that point. I have reference to the wheel tracks as they were when I saw them at the time of the survey. The bridge is sixteen feet wide approximately. The black line represented by dots is drawn to represent the barbed wire fence which is Mr. Shank's property line. It is about two feet approximately from the place I have marked "outside wheel track" to the barbed-wire fence. In traveling up what I have marked the main traveled road, those red wires are suspended over that traveled part of the road. A loaded hay-rack extends clear under it because the fence at this point is knocked down, that is, the wheel track on the outside of the bed of the box would be probably eighteen inches.

Mr. NUGENT.—It is understood, Mr. Fraser, that the testimony of this gentleman is as to conditions as he found them there at the time he made that survey?

Mr. FRASER.—Yes, sir.

Mr. NUGENT.—And not as to conditions at the time of this accident [16] as far as his testimony is concerned?

Mr. FRASER.—He has testified as he found it when he was there.

Witness then continues:

The distance between points B and B marked on

(Testimony of Elmer Bird.)

exhibit "A" is just about two hundred five feet. That is from memory, it may not be definite to a foot. That represents the distance between two poles of the defendant company. At the time I was there none of these wires were insulated. We measured the height of the poles for an interval of either four or five poles west of this point and one pole east. They were varying from $29\frac{1}{2}$ feet to the top of the bottom wire up to 31 feet. I found no other place which I measured where the wire was as close to the ground as it was at the point marked X, 27 feet 6 inches.

Cross-examination.

I am twenty-six years past and have been engaged in the civil engineering business nearly six years in and around Boise most of the time. I have been in Oregon and Wyoming both. At the time I made the measurements to which I have testified, I do not know of my own knowledge whether or not the same conditions existed as existed at the time Mr. Shank received his injury. I do not know whether the bridge which is depicted in exhibit "A" was in the same condition on August 8, 1910, when Mr. Shank was injured as it was when I made the survey. I was not in the country at that time. The electric light pole at or about the end of the line marked A on Plaintiff's Exhibit "B" is 30.07 feet from the ground. I believe I stated it was 28.

Redirect Examination.

It is not possible from an engineering standpoint to change the bridge on that ditch to any great

(Testimony of Elmer Bird.)

extent. The ditch is very flat at that point. The bridge would have to be practically in [17] the same location ever since the ditch was there. It would be my opinion that the ground is such that the bridge could not be lowered. I have notes here of the actual measurements of the height of five poles. There is one, as I have stated, that is 30.07—the one marked A. A and B are the same. The next one is twenty-nine six, that would be one west of B. The next one is 31.6, that is the second one west and the last one is 30.9, all going west.

Recross-examination.

I made no measurements, but I think these poles are about 14 inches from Mr. Shank's fence. When I stated that the height of the pole on the exhibit at the point marked "A" was 30.07 feet, I made a mistake. I meant that that was the height from the ground to the bottom wire, not the height of the pole. I made no measurements for the purpose of ascertaining the height of the pole from the ground. The bottom wire is 30.07 feet. All the measurements that I made were to the bottom wire. I don't understand the question to ask what the height of the pole was, but the height to the bottom wire. In arriving at the height of the wire from the ground I took it by triangulation. I did not measure the distance at the point marked X on Plaintiff's Exhibit "B" from the ground to the wire on account of the sag. I wouldn't take any chances throwing a chain up over the wire. The distance, 27 feet six inches, is not the measured distance, it is the distance

(Testimony of Elmer Bird.)

between the elevation of the ground at that surface and the wire, considering no slack in the wire. I don't know, and the plat, Plaintiff's Exhibit "B" doesn't give the distance from the ground to the lowest point on the wire. The point would be lower than that, possibly two or three inches—two or three inches lower than 27 feet and 6 inches; that is just a guess. I did not take any measurements from the point on the [18] bridge that is shown on Plaintiff's Exhibit "A" to the lower wires. I had the elevation of the bridge which is shown there. The width of the bridge I would think possibly an inch or two short of 16 feet. The heavy line marked A and B on Plaintiff's Exhibit "B" represents the line of the road. At the point marked X on Plaintiff's Exhibit "B" the road takes a swing, I should judge about twenty or thirty feet before it gets back out again and at any point under the center line of that road where the center of the outside wagon track would be practically under the wire; maybe not exactly, but very close for a distance of twenty or thirty feet. The point marked X on Plaintiff's Exhibit "A" represents approximately the point marked X on Plaintiff's Exhibit "B"; that is a guess; there is nothing definite about that. It was possibly ten feet from the bridge.

Redirect Examination.

If I had taken the actual measurement at point X of the height of the wire above the ground and allowed for sag in that wire it would have been at a less height at that point; as a matter of fact, the 27

(Testimony of Elmer Bird.)

feet 6 inches is somewhat higher than the wire actually is at that point.

[Testimony of W. H. Harvey, for Plaintiff.]

W. H. HARVEY, a witness called and duly sworn on behalf of plaintiff, testified:

I reside at Buhl. On or about the 8th of August, 1910, I was residing immediately across the road from the plaintiff's home. On the day Mr. Shank got hurt by a shock of electricity, I was somewhere in the neighborhood of between two and three hundred yards from the accident when it occurred. I went up to the point of the accident shortly afterwards, within a minute afterwards, I should say. I just came out of the door to go to the buggy and I heard a strange, ripping, roaring kind of noise. I immediately looked in [19] the direction of it and saw a flash and heard the repeated sound. At that time a little boy appeared and yelled for me to come, that Mr. Shank had been killed. When I arrived there Mr. Shank had been released from the cable he was holding on to and he and his hired man were lying on the bridge. I carried Mr. Shank to the buggy and drove him to his home which was about a couple of hundred yards from the scene of the accident and carried him into the house. I remained with him practically the rest of the day. The accident occurred somewhere in the middle of the forenoon. I assisted in undressing him after I took him home. I carried him, with assistance, into the house and put him on the bed. He began beseeching that I take off his gloves and shoes. At that time his

(Testimony of W. H. Harvey.)

hands were cramped and rigid. He had on heavy horsehide gloves. I poured olive oil down in both gloves, took my knife and slit the gloves wherever I could; finally I took them off in that way. His shoes I ripped so as to release them and also cut the socks off. When his shoes were removed the skin from the bottom of his feet was hanging pendant, and as near as I can describe it, a good deal like soot would hang on the bottom of a stove lid, just hanging in shreds and blackened. The left hand was to all appearance perfectly cooked at the time, likewise his right foot. The glove on his left hand was charred for the most part and full of small holes. His body was more or less burned all over but nothing as compared with his left hand and right foot. He was operated on repeatedly for these injuries. I would say that he was operated on for days and days and I was present at every operation. None of his immediate family could bear to stay in the room while these operations were being made; all of them being made without an anesthetic. I believe that there was one where they gave a slight anesthetic. There was skin grafting. I was present and helped in that operation. I held the knife on his thigh while the doctor [20] separated the skin and grafted in several places on his body. He took the skin off his thigh and placed it on his arm. He was not under an anesthetic at that time.

I noticed the haystacker that Mr. Shank was driving at the time of the accident. There was an orchard intervening between me and the scene of the

(Testimony of W. H. Harvey.)

accident which shut off the view of the man and the team, but I could see the top of the derrick and also the electric wires over it very plainly. I am familiar with haystackers of that kind. At the time I first looked and noticed it the boom on the top of that haystacker was horizontal; it was not raised up. At that time I had seen a number of haystackers similar to the one Mr. Shank was driving in that vicinity and around in that country. They were very common. I have noticed them being transported up and down the highways of that country and they were at that time. I have been upon the ground where the accident occurred. I lived between two and three hundred yards from that point. I had driven up and down that road frequently prior to the time of this accident and a good many times since. The haystacker was being driven west along the road at the time of the accident. In driving west along that road it is necessary to pass under the wires of defendant company in order to cross the bridge in the road. It is impossible to go along the road without going under those wires. Mr. Freedhein came to my place last Sunday and requested that I go out and show him where the accident occurred, and I took him over and showed it to him and pointed out to Mr. Freedhein the point. At that time when I was there with him the poles and wires and the bridge and the road were absolutely in the same condition as far as could be discovered as they were the day of the accident. Apparently there had been no change in the wires, poles or bridge since that time.

(Testimony of W. H. Harvey.)

I measured the height of the wires at about the point of the accident. My measurement [21] was 27 feet three inches from the wire to the ground at the point of the accident. From the location of that bridge and ditch it would be absolutely out of the question to lower the bridge. It is a dead lateral as it is and the bridge is at the lowest point and has been ever since I have been there. I was not in the county when the defendant company constructed the line of wires and poles.

Cross-examination.

It will be two years the first of this coming April that I have been in the vicinity of Buhl. I was engaged in the ranching business at that time. I have been admitted to the bar, but do not practice my profession in this State.

The day the accident occurred was an ordinary August day, clear, and I don't remember of any wind blowing. As far as I can recollect, the day was fairly warm and the roads dry and dusty.

I had just stepped on the porch, when I first heard the peculiar ripping, roaring sound. I would estimate that it continued one and two minutes. There were three very distinct explosions and flashes. The explosions and flashes were virtually simultaneous; as quick as I threw my eye up, I saw the flash. I noticed the position of the stacker; it was in plain view. It was horizontal. It is a difficult question to answer whether it was above the wire or below it, for the reason that the flash made a kind of blending of the wires; that is, the electric wire and the cable that

(Testimony of W. H. Harvey.)

ran over the stacker. I cannot answer as to what part of the haystacker came in contact with that wire. I did not make any examination of the haystacker afterwards. The cable, however, was over the top of his arm, ran over the top of the boom, and if there was any contact the electric wire was above the boom. I did not see Mr. Shank or the man with him at the time, or the horses. They had four horses on it, I noticed afterwards. They were standing as I drove up. [22] There was very little intermission between the flashes. I would say an eighth of a second or an eighth of a minute—something like that; just enough to make them good and distinct. It would have to be a guess. I could not tell whether or not the boom was in the same place on this wire after the first flash. I spent two or three months in Buhl in the summer of 1909. I went out to my ranch in April, 1910, a few months prior to the time Mr. Shank was injured. Generally speaking, the same general form of stacker was the style in general use in that vicinity that summer. They generally buy a telephone pole, if they can get one, to make their booms and standards out of. I don't know the length of the boom on these stackers or as to the height of the stacker, only what a person would judge from his eye. I don't know whether it worked on a hinge or not. It would not be my judgment that all or practically all of the stackers in that vicinity at the time Mr. Shank was injured, with the exception of this one of his and another one, had a boom only about eighteen feet in length. There were three

(Testimony of W. H. Harvey.)

or four within operation of my place at that time; within sight of my place. Mr. Metham, on the adjoining place, has a stacker that is similar; whether it is the same or not I cannot answer. I would estimate the height of the mast on his stacker at twenty-odd feet. I would estimate the length of the boom on that stacker twenty-five or thirty. The Hatfield and Bowers people across the Shank place had a similar stacker in sight of my home. I had seen that stacker. I would have to give a guess as to the length of the mast on that stacker. I would estimate it better than twenty feet, and the boom somewhere in the neighborhood of twenty-five and thirty feet. I can't answer as to whether that boom also worked on a hinge. Mr. Sommers had one of a similar kind. The height of the mast on his stacker was approximately twenty-five feet, or somewhere in that neighborhood. The length of the boom the same as the other, somewhere between twenty-five and thirty [23] feet. I can't answer as to whether or not the boom worked on a hinge. Greshaver and Hopson had a stacker with a standard and arms a different style from these, but the same uniform outline. The height of that stacker I would estimate in the neighborhood of twenty feet and the boom twenty feet; perhaps a little more. I can't say whether the boom worked on a hinge or not. Nearly everybody that I know had one similar; that is the outline was similar. I don't know the length of the booms of them or whether they worked on this hinge. Those stackers are not generally kept on the farm. They had to

(Testimony of W. H. Harvey.)

depend on each other for help. They would swap derricks and swap machinery and that necessitated moving back and forth. They practically all had them, either as individuals or as neighbors, community property. I had seen stackers hauled along the road prior to the time Mr. Shank was hurt, I would estimate, ten or fifteen times. I don't know who hauled them. Aside from Mr. Shank, the only other persons I could name whom I saw with stackers on the road would be Mr. Van Hoy and Mr. Mathews. The stacker that Mr. Shank had that day Mr. Van Hoy claimed. I remember three different people that I can name who hauled haystackers along that road prior to the time Mr. Shank was injured. I can't name anyone else. I went on to this ranch in April, 1910. The land there, that is, virtually all of it, was in cultivation in that vicinity at that time. They commenced to cut the first crop of hay that summer between the first and 15th of June. I can't answer whether or not I saw haystackers along the road about that time. All I can say is that it wasn't an uncommon thing to have them go by the house or to pass them on the road. I can answer your question this way, Mr. Nugent, that this particular stacker that year was moved on and off my place for all three crops, this particular stacker. Mr. Van Hoy took it on and off the place on each occasion, he and his man. I saw Mr. Matthews also hauling this same stacker. I saw three men hauling this same [24] stacker there and these are the only three men that I can name now that I saw hauling a stacker.

(Testimony of W. H. Harvey.)

At the time I arrived upon the scene Mr. Shank was lying on the south side of the bridge injured. I noticed where the stacker was. I had to pass it coming to Mr. Shank. There were four horses on it. It was approximately one hundred feet from the bridge. The stacker was not on wheels; it was on a frame, a derrick frame, the usual frame. They were simply dragging it along the road. I do not know the exact point on the highway where the boom on this stacker came in contact with the wire. Mr. Shank was lying on the south side of the bridge which is the side fartherest from the pole-line. He was at the south edge of the bridge. The nearest point to the bridge to the nearest point under the line I would estimate to be five or six feet. At the time Mr. Shank was injured the wagon road ran for a distance directly under the wire in the neighborhood of twenty or forty feet. There is no other travelled way there. This pole-line is between one and two feet approximately from Mr. Shank's fence. Water was turned onto the lands in that vicinity May 11, 1906.

[Testimony of A. F. McCluskey, for Plaintiff.]

A. F. McCLUSKEY, a witness called and sworn on behalf of the plaintiff, testified as follows:

I have resided in Buhl four years on the 6th day of June. I am a physician. I was practicing my profession on or about the 8th day of August, 1910. I was called upon about that date to visit Mr. Shank. Some time along about the middle of the morning I received a very urgent call to make haste to his ranch, and on so doing found the man suffering—

(Testimony of A. F. McCluskey.)

found him—he had been removed to his home by friends in the neighborhood, and his shoes had been removed by the time I reached there. The suffering of the man was simply intense. Without waiting to make much of an examination [25] I proceeded immediately to relieve that suffering so far as possible. I found that ordinary drugs in the nature of opiates were hardly sufficient. It was with the utmost care that we used excessively large doses and eventually numbed the sensibility to a sufficient extent so that it was possible to go ahead and make an examination. Looking at the most extensive injury, apparently, first—in fact, it was very difficult to determine which was the most extensive injury, that on the arm or the feet, for the odor of burned tissue was all-pervading throughout the room. The soles of the feet were hanging in a charred, blackened, burned mass; the toes were distinctly blackened, and the nails were hanging, having been separated by the severity of the shock. This was also true of the fingers of the left hand, and the thumb, likewise a very large mass about the middle of the flexor surface of the large muscles that govern the hand, moving it, bending it in this wise (illustrating). Practically all the muscles that go down to the hand in moving the fingers in the position of grabbing or grasping anything arise in this area pass along where the point of contact was evidently most intense. That was the greatest and deepest burn, as we afterwards discovered. It is never possible in a burn of this type, and wasn't in this case, to determine how much injury to tissue is

(Testimony of A. F. McCluskey.)

done at the particular time. This becomes apparent anywhere from a few days to perhaps two or three weeks later, as was intimated by one of the other witnesses, by the line of demarcation between dead and living tissue. Going a little more into detail on this, it might be said that the nerve supply having been killed by an electric shock, the nerve supply of any tissue, whether it is muscle or building up tissue, or skin, or nails, or what not, that tissue dies, because the nerve supply that enables nature to repair it has been destroyed. Now, how much nerve tissue has been destroyed by an electric shock, as I said before, [26] it is not possible to determine absolutely at that time, and it requires a number of days, to say the least, in order to determine just how much injury takes place. Lest we do more damage than we could do good at the time we removed all dead tissues that we were absolutely certain were dead, this with the patient suffering intensely all the time. No amount of opiate of any kind or description would so deaden the pain that the handling of tissues where burnt nerve ends were exposed—where these little nerve ends were exposed the pain might be likened to the pulling of a tooth where it is constant. There is no amount of opiate or anything else that will take away all of that pain at the time. So that we removed what dead tissue—myself and assistant—and put on a preliminary dressing, giving an extremely poor prognosis. It was impossible to state just how much damage was done. In fact, we didn't consider that the man's life was anyways near safe at this

(Testimony of A. F. McCluskey.)

time, and couldn't say so for a number of days, for the extensive injury, the amount of poison absorbed therefrom, the injury to the red blood cells, due to the shock of the electricity passing through the body, the injury to the spinal column and the brain substance, we couldn't tell how much damage was done.

I am acquainted with the place where this accident occurred. I have passed there a great many times. About the time of the accident I was passing along that road on an average probably of from ten to fifteen times a week. I have crossed the bridge shown in Plaintiff's Exhibit "A" a number of times. The fact of the matter is that it is the best road, and the shape of the bridge is such that in making a turn even in a small, light rig such as I drive, I go under at least one if not more than one, with the north side of my rig in passing along that road. I have been over the road lately and the bridge and wires are in practically the same situation as they were at the time of the accident. [27] There has been no change that I could determine. I first went to that country June 6, 1908. I know what a haystacker is. In a general way, I have noticed a great many of them down in that country. On or about August 8, 1910, I have seen them up and down the public road. It was not at all uncommon to find them moving, in fact, a great many men own land on both sides of the same road, and move them back and forward to the crops.

Cross-examination.

Prior to the time Mr. Shank was injured I had seen different men hauling haystackers along the road as

(Testimony of A. F. McCluskey.)

far west as Section Eight; that is not on this particular road. Just east of this at this particular time there stood for a number of days in the middle of the road, necessitating my going around it, at the farm of Mr. G. N. Davis, about a mile and third east of where this accident happened on the power-line, a stacker of identically the same type and approximately the same dimensions. I don't recall particularly just now who else had a stacker that I saw hauled along that road. It never occurred to me to make note of them at that time, and it don't come to me just at this time. It is my impression that there were a number there, though, and that one particularly, because I had to drive around it a number of times. I never was close enough to the stacker that Mr. Shank had at the time he met with this injury to examine it. I don't know how high the mast of the stacker owned by Mr. Davis was and I am not very shrewd at guessing. Mr. Shank's stood—well, I would pass it close enough, because it stood in the road where the accident happened for a day or two afterwards and I passed it there. I did not examine it particularly; just glancing at it as I drove past in the buggy, the height of the mast. It made no definite impression on my mind; I wasn't interested. I do not know the length of the boom. I do not know how high the mast was on the Davis stacker [28] or the length of the boom on the Davis stacker or whether it worked on a hinge. I do not know of any person in that vicinity having been injured by coming in contact with that wire along the road prior to

(Testimony of H. H. Freedhein.)

the time Mr. Shank was injured. In my judgment, Mr. Shank has been permanently injured to a very great extent.

[Testimony of H. H. Freedhein, for Plaintiff.]

H. H. FREEDHEIN, a witness called and sworn on behalf of plaintiff, testified;

I reside at present at Twin Falls, Idaho. I have resided there five years. My business or occupation for the last number of years has been electrical wiring and construction and contracting. I am an electrician. Beginning from 1888 I have been engaged in the various occupations of electricity for the last—well, twenty-two years. Some of the places in which I have worked following that profession of electrician was the Westinghouse Electric & Manufacturing Company in Pittsburgh; other places are Manitou, Colorado; Leadville, Colorado; Lake City, Colorado; Denver, Colorado; Bingham Canyon, Utah; Provo Canyon, Utah; Eureka, Utah; Tintanic Mining District—I was superintendent there of the local division of the Telluride Power Company. They carried a voltage of 40,000 volts from their transmission lines. I have made a study of the transmission of power along lines in a practical way. I was out on the ground represented in Plaintiff's Exhibit "A" on the 24th of February. Mr. Harvey accompanied me from his ranch to that point. I made an examination of the defendant's lines and wires and poles at that point between those two poles. In the first place I got directly under the wires and I threw this string over, pulled it down as tight as I could and touched

(Testimony of H. H. Freedhein.)

the ground at the point where Mr. Harvey told me that the contact took place. This was at the point marked F on Plaintiff's Exhibit "A." The height of the wire from the ground at that point was 28 feet—I mean the wire next to [29] the fence. The one further out from the road would have been a shorter distance. From the road to that wire it would be a shorter distance than the one measured. Plaintiff's Exhibit "B," to my mind, shows approximately a correct profile of the ground between the two poles. I have had experience in the construction of long distance transportation lines for power purposes at Provo Canyon, at Eureka, Utah, at Bingham, Utah, where we constructed lines for 40,000 volts for 50,000, for 440 volts, 210, 220 and 110 volts. There is a standard recognized by electricians who are in charge or control of the construction of long distance and other power-lines conducting electricity for power and lighting purposes as to the height of the poles that should be used in a country similar to that in which this accident occurred. The standard recognized by engineers and parties in charge of the construction of power-lines such as this is and in a country such as this is, as to the height of the poles that should be used along these highways is from thirty-five to fifty feet, according to the authorities I have seen, and this I know outside of the authorities. It is the practice to use poles about forty feet in length for high tension transmission lines. In the construction of these power-lines poles of different lengths are used, depending on the contour of the country. A country

(Testimony of H. H. Freedhein.)

that is traversed sometimes goes up and down, small variations, and it is the object of using different lengths to keep the top of the wire on a grade to keep it level as much as possible.

Cross-examination.

A forty-foot pole would be practically standard for high tension wire line construction; that means a pole measured from the top to the bottom of forty feet. That pole would ordinarily be put in the ground between six and eight feet, sometimes five feet. That is standard construction for ground that is made of rock or if the earth at that point is rock. If it is ordinary, solid, about five [30] and one-half feet or six feet is not right; six feet is not about right. I have been engaged in this business for twenty-two years, on and off, but this direct question as to the high power transmission lines, I have not been engaged in all that time. Down in Utah I was employed by the Telluride people in keeping in repair as well as to help construct lines fifty miles long. I was the man that kept them in repair to a certain extent. At times I looked after the wires on the line. Sometimes I looked after all the poles that were rotted or needed repair. If I had a forty-foot pole I would put it in the ground about eight feet, probably six, if it was solid. If a pole is seven inches in diameter at the top and forty feet long it is a suitable pole for all voltages across such a country as the one here in question. It is practically a level country. All the variations in the surface are small undulations that come in a comparatively level country. I took no

(Testimony of H. H. Freedhein.)

measurements of the poles. Think a forty-foot pole is standard and I would put it about eight feet in the ground. There are three wires strung on these poles, one on top and two at the sides of the arm, and these are on the cross-arm. It is the general, usual and standard form of construction so far as the wires are concerned. It is a three phase current. They usually put one wire on the top with an insulator on top of the pole, then the cross-arm lower down and an insulator on the top of the cross-arm and wires attached to the insulators. The wires were attached to the insulators, the usual insulators in the ordinary way upon these poles. I don't believe that these are the usual insulators that are accustomed to be used on good construction. I did not go up to look at them. If what I have heard of the voltage being 22,000, I certainly would object to them. I don't know about the voltage on this particular line. Wires range from 42 inches to 72 inches apart in my experience [31] if for high voltage. The lower wires on high voltage of from 22,000 to 23,000 would be put about eighty inches to forty or sixty inches or 72 inches apart, and in good construction the wire on the top is about the distance from these other wires as they are apart. I did not go up to measure or see how these wires were located in that regard. I have Louis Bell's work on the "Transmission of Electrical Energy" with me. I believe that is the title. "Electrical Transmission of Water Powers," I believe, is one of them. I think Hutchinson wrote that, if I ain't mistaken; R. W. Hutchinson. I think that is

(Testimony of H. H. Freedhein.)

the title of the book. Another authority on the subject is Hydro-electric Power Plants. I believe something like that. I don't remember who wrote it. I don't know any of the titles of books in ordinary and common use by electrical engineers; in fact, I don't call any to mind. The "American Institute of Electrical Engineers" is a society recognized by electrical engineers. I am not much familiar with the proceedings of that society. I used to take the "Electrical World," the "Electrical Record" and the "Western Electrician," but they just contained articles and papers read before these societies. Did you ever see the "Standard Hand-book for Electrical Engineers"? I don't remember ever having seen that. I never went to any school of electrical engineering; I didn't even finish the public school. My business in the Twin Falls country has been the installation of electrical wiring in houses for heat, light and power, and in telephone construction for the Rocky Mountain Bell Telephone Company. On a forty-foot pole the first cross-arm might be ten to eighteen inches below the top of the pole. If I was going to have a high-tension wire strung to carry a voltage of 22,000 or 23,000 volts and wanted to put the wires a safe distance apart, I would put the cross-arm thirty to forty inches below the wire on a proper insulator on the top of the pole. Out on [32] the end of the cross-arm I would put a pin and an insulator and for that voltage the top of the insulator would be in the neighborhood of twelve to fourteen inches above the cross-arm. Opinions might differ on

(Testimony of Charles Coker.)

guess. The length of the boom I would approximate at, say, from twenty-five to thirty feet. I can't tell the exact number of people in the vicinity of where this accident occurred who had haystackers during the season of 1910, because they all use stackers, and I haven't had any occasion to make any note of it. I never took any particular notice as to the size of the stackers. I never measured any of them. Practically all of the people that have alfalfa use them. This [34] accident occurred on one of the new irrigation projects, the Twin Falls Carey Act project. Water was turned on in that locality sometime in April, 1906, for the first time. Before that, it was all sagebrush; just a little wheat crop was raised that year, mostly. In 1907 they raised a little grain and started on alfalfa. In 1908 they raised alfalfa and grain. That was about the first year they had anything to speak of in the way of a crop of alfalfa. I never took any particular notice as to the size of any of these haystackers.

[Testimony of F. E. Chamberlain, for Plaintiff.]

F. E. CHAMBERLAIN, being called and duly sworn on behalf of the plaintiff, testified:

I reside at Twin Falls. I have resided there since the fall of 1905. I have been engaged in ranching since I have been in Idaho. I am acquainted with the location shown on Plaintiff's Exhibit "A." I have been along this road a great many times. I have a ranch just west of there a little way. I have crossed this bridge a great many times. In driving west along the road to cross over the bridge it was neces-

(Testimony of F. E. Chamberlain.)

sary to pass under the wires of the defendant company in driving by them on and off of that bridge. I know what is known as a haystacker. I have seen a good many of them. I have seen them around the vicinity of the bridge and various places on the tracks since 1906. I have seen them on the highways at that time and both prior and since.

Cross-examination.

They raised a good many crops there in 1907. In 1908, I should say, that there was fifty per cent of the land in cultivation. Early in the history of the tract, it was mostly grain crop. About 1907 was the beginning of alfalfa to any amount in that vicinity. In 1908 I should say half of the country was in cultivation. In the beginning, they didn't need any haystackers. As the country grew up it became so that more people had their own haystackers. As time goes [35] on it is getting so that more and more people own their stackers. They have what they call the overdraw stacker, also the side-delivery stacker. The stackers that you buy at the implement houses that you don't have any mast on, I would not have them, but opinions differ as to that. There are people who do use them. I took no particular notice of these haystackers in 1906, 1907, 1908, that I saw in the vicinity of this place other than I saw that they were ordinary haystackers that were being constructed there. The stacks of hay have been getting larger as the acreage increases. I never measured any of these haystackers to get their exact dimensions. I simply know the general dimensions of them. On one kind of

(Testimony of F. E. Chamberlain.)

stacker all of the boom is on one side of the mast. There is another kind where about one-third or one-fourth, perhaps, is on one side and two-thirds or three-fourths, as the case may be, is on the other side. When the boom is all on one side of the mast it might be called a rigid stacker. They usually try to get about a thirty-five foot pole for the rigid stacker, whereas a twenty or twenty-five foot pole is tall enough for a boom stacker. The longest pole I know of being used on a haystacker prior to 1910, I should say, was in the neighborhood of thirty feet and with a thirty-foot boom eight or ten feet of it would be on one side of the mast and the balance on the other. I never heard of anyone being hurt at that point except Mr. Shank, either before or since that time.

**[Testimony of Jake M. Shank, on His Own Behalf
(Recalled).]**

JAKE M. SHANK, a witness heretofore duly sworn, on behalf of plaintiff, upon being recalled, testified:

On the 8th day of August, 1910, I was living on my place one-half mile east of Buhl. I live in the neighborhood of two hundred yards west of the bridge shown in Plaintiff's Exhibit "A." I traveled up the road that morning. I left the house and went down after [36] the stacker. My hired man, by the name of Moran, went with me. We had four horses hitched on to it. After we hitched on to it we went south under the power-line and up the road west. Before I came to the point where the accident occurred I had passed under the wires of defendant company; the

(Testimony of Jake M. Shank.)

line of wires shown on Exhibit "A." About, probably three hundred yards east I passed under the line. I passed straight along underneath them, and then turned on the road. From the point of the accident it was probably three or four hundred yards down the road where I had crossed under the wires. I had no difficulty in going under the wires at that place. At the time of the accident I was standing on the outside of the derrick—on the south side of the derrick away from the wires. We pulled up to the bridge up the road and stood in the road and I was driving the inside team next to the wire fence and was right up against the wire. The hired man had to pull his team about four or five inches to square the derrick and he had to pull right in toward my team, and I got out from the fence away from the horses and stood on the south side of the derrick, and I stepped outside of the derrick and asked him if he was all ready and he said yes, and just as I said that I threw my arm up and grabbed the manila rope there, and just as I grabbed it there was a flash came and blinded me and the wires swung and hit me on the arm; the wire cable. I was conscious after that, but could not see or could not holler; could not do anything at all. I was hung on to that wire and was drawn up in a knot, you might say. I could feel the electricity going out all over me, and I could hear the popping of the electricity. I could hear the fellow talking to the horses. They were trying to get away from him, and he was at the head of them. When he saw me hooked on to the wire he ran back and he said, "My God, Jake, you

(Testimony of Jake M. Shank.)

are burned up." Then, I felt something take hold of me, give me a jerk, and it threw me inside the derrick. When he left the horses and did that, all [37] four horses started to run. The derrick knocked me down when he jerked me and knocked him on top of me and the derrick dragged us across the bridge and the derrick went over the north end of the bridge and they pulled it off to the right and gave it a tilt and let us out. I got up and walked back on the bridge and fell down. I saw my neighbor up the road and told him to send for Mr. Harvey. I was there when the bridge was constructed and when the defendant company erected its power-line across there. The grade of the road is the same now as it was then and the bridge is in the same place and the same position as it was then. This same derrick passed under those wires at a point east of the place of the accident. I did not pass under them myself, but I was there when Mr. Van Hoy and his hired man took this same derrick out east of this same pole. That was on the 22d day of July, 1910. This same derrick had passed under those wires to my knowledge three times beside those two times which I have testified to. We pulled it out under the wires twice when I was present west of my place, on my place, about, I should say, four hundred yards west of where the accident happened, and Mr. Van Hoy, I have seen pull it out once or twice through there at a different point on the line. On the morning when I brought the derrick out the boom was in a horizontal position. It was fastened in that position; it was tied by the other end. There

(Testimony of Jake M. Shank.)

is two-thirds of it on one end and one-third on the other, so that there is a short end of the boom on one side of the mast and a long end on the other and I had fastened the short end down. We have a rope there that we use to raise and lower the stacker. It was tied at the time of the accident and the boom was horizontal. The highest point of the pole of that derrick is about 27 feet five or six inches, I should say. We measured it. I would not say exactly, but it was some place in there. On top of the pole is something like five feet above the boom where [38] the boom crosses the pole, so that the horizontal boom would be five feet lower than the top of the pole on my stacker. I had passed under the wires and had noticed this derrick pass under it the times I have mentioned and the pole cleared the wires in each case. Mr. Van Hoy built the stacker first; I helped him to remodel it in 1910 prior to the accident. We had been told that the wires were thirty feet above and we had to build some kind of a derrick so that we could get the derrick under the wires without having them taken off and consequently we built the derrick between 27 and 28 feet, so that we would not have any interference, no trouble with it at all. I have lived on my place since about the 15th of April, 1906. Prior to August 8, 1910, the time of my accident, I had seen haystackers similar to mine in that vicinity. I had seen them transported up and down the highways in that vicinity.

Cross-examination.

I went onto my ranch before the power-line was

(Testimony of Jake M. Shank.)

constructed and was there when it was put up. The defendant company's line of poles is just outside my fence, practically against the fence. At the time I went on my land I don't know whether this road was accepted by the county but then the road was established when I went there; they were using it as a section line. The company had put up the posts and they had made it the main travelled road at that time. I had to go under these wires in order to get into my place. I saw this pole-line frequently. I knew the wires were there and I saw them very frequently. I also knew that they were charged with electricity and that they were dangerous. That line was constructed into the town of Buhl. The town is electric lighted by this company by electricity carried over this line, and I knew that at the time of the accident and for a long time prior [39] thereto, the wires on the poles were a little higher than they were between the poles, as there was a little sag in the wires between the poles. Prior to the time of the accident I had never made any measurements to ascertain the height of these wires from the ground at any point along this line. This road is supposed to be fifty feet wide from fence to fence. The north side of the road had a point where you make a turn to go on to the bridge goes right up against my fence. The main travelled part of the road is graded right to the fence. It is the only way you can get on the bridge and you have got to travel that. The haystacker is built on a frame, and I think it is about fourteen feet wide and the frame is about fourteen

(Testimony of Jake M. Shank.)

feet long. The piece on which it stands, I think is made out of six by eight. It would be eight inches high. There was nothing under the base of this haystacker at the time I moved it on the day of the accident only the skids that it was on. Just as I told you, they were six by eight. It is made in a skid; the pieces were sixteen feet long and they were sloped at both ends so that you could pull it back and forth like the runner of a sled. The upright mast was about 22 feet. In the center of the flat part were two pieces 4x6 and the upright boom, and from the ground to where the mast went across was about 22 feet. The boom works on a hinge. The boom was a pole about thirty or forty feet long and it was, perhaps, twelve or fourteen inches through; I would not say. That would be a guess. On the top of this boom that went across the top of the mast there was another little upright that was used to hold the guy wire that went across the top.

Defendant's Exhibit No. 1 is a picture of the same derrick, the one in question.

(Defendant's Ex. No. 1 admitted in evidence.)

[40]

(Witness handed another photograph.)

I think that this is a picture of the bridge taken at the same time, taken going west coming from the east. This picture here is a photograph of the scene of the accident as it was at the time of the accident, that is, as near as you could get it, I guess. It was taken below the point where the accident happened, so that the accident happened at the point

(Testimony of Jake M. Shank.)
shown in the picture.

(The picture offered in evidence as Defendant's Exhibit No. 2 admitted.)

I mean by 27 or 28 feet the top of the derrick from the ground up. The long end of the boom is moved up and down in stacking operations by means of this rope on the other end. There is a hinge whereby the pole moves up and down to accommodate itself to the varying height of the stacker. The material in the piece running from the top of the pole was a wire cable. From A to B on Exhibit No. 1 there was a wire cable running across the top. I would say it was in the neighborhood of a half inch in thickness. The bottom or piece on which the structure stood was about fourteen feet square, but the skids were sixteen feet pieces of timber; they stuck out a little further on the ends. The length of the wooden boom from A to B was 38 or 40 feet; I could not say. The other end of the boom was 12 or 13 feet over in the direction of A from the mast, supposed to be about one-third of the total measurement. The boom was a pole of the same character as a telephone or electric light pole. On the 8th of August, the day of the accident, the road was dusty.

Photograph No. 2 was taken about 100 feet down from the bridge from where I was hurt, anyway, 100 feet. On the south side of the stacker away from the electric light line, and I was not touching the frame at all. The accident occurred approximately at the bridge a few inches off. The south

(Testimony of Jake M. Shank.)

corner was a few inches to the south and east of the bridge. We didn't have our derrick [41] squared up, squared on to the bridge. You have to hug the line to get on the bridge and you have to get up there and drive as close as you possibly can and the derrick just fits on the bridge nicely when it is on there. We had to be very particular. When you pull up to the bridge you have got to be particular not to get off to the south of the bridge. On the south end of the bridge it probably lacked five or six inches of being to the bridge; that is, it did not get up to the bridge yet. It had not squared around. We were going to square the south end of the bridge and then we were going to drive my team on the bridge and he could hold his team and I could pull my team on the bridge and square it and take it across. My team was over on the north side, but I stood on the south side. I did not have hold of the lines. The team I was driving was on the opposite side from where I was standing. I had gone over to the south side. I was traveling west and came up to this point and found myself near the fence. I let loose of the lines and went over to the south side. The other man was standing on the bridge in front of the derrick. He had hold of his team by the heads. He was not guiding my team; my team would have to be quieted; he had to pull his team about six inches to square it on to the bridge. He pulled the north end up to the bridge; he had to pull his team up and hold it there until I pulled my team on to the bridge. That is the only way we

(Testimony of Jake M. Shank.)

could get on to the bridge because both teams could not square it on to the bridge at the same time. There were four horses abreast. I was driving one team and he the other. I was fastened on the one corner and he to the other. The base of the stacker was about as big as the bridge within a foot or so. At the time of the accident I was standing off to the side of the derrick as near as I can tell at the point marked S on Exhibit "A." I was standing about the point marked S and I was facing north. My body was facing north. I was looking in that direction when I received the shock. Just before that I was looking [42] at the bridge and I asked my man if he was all ready to pull, if everything was all right, and he said it was and at that I turned my head away from him, looked up and threw my hand up like that. There was a rope running down on the derrick and I just put my hand on that rope and as I looked up there was a flash came and blinded me and I couldn't see. It was my left hand I reached up. I just threw it up like that and caught hold of the rope and the cable hit me in the arm, as far as I know. It was a manila rope. Just as I turned around and started to look the flash came. I turned to the north away from the man with the team and facing the north and I threw my hand up on this rope. I looked up to the rope like a man naturally would if he was going to take hold of anything and just as I grabbed hold of it the flash came and the cable struck me and blinded me and I could not speak or see anything; I was drawn into a knot.

(Testimony of Jake M. Shank.)

I could not see. I could hear people talk. I heard him trying to quiet the horses. I was getting ready to square this around. The horses had never moved to my knowledge. They might have, but I did not know because it all happened so quick I could not tell. No flash had happened before that. I had used this stacker before this accident. I have helped stack two seasons' crop with it. I had not moved it along a country road before. I had helped Mr. Van Hoy and his man at the time they took it from my place in the spring over to Mr. Harvey's place and remodelled the derrick. On the second cutting of alfalfa hay the stacker was down on my field, to the east of that bridge, and Mr. Van Hoy and his man came over and started to get the derrick, and I walked down toward them and they took it out east of this first pole, right east of where I got hurt, took it out between that pole and the next pole and started to cross this bridge. This was not at the time the accident occurred. I moved it along the road on this day before I got to the bridge. The derrick had been borrowed by a man by the name of Matthews and I drew it back [43] and left it in the public highway, and I had to cross under the electric light wires when I had it. I crossed under these wires, came right up here and met with the accident. The derrick was in the same position when I crossed under here as it was then. I do not know just how many feet of this bridge it was that I crossed under the wire. It happened in the same forty. It was probably eight or nine hundred feet, maybe shorter, maybe a little

(Testimony of Jake M. Shank.)

more. There is a road coming out at the point where I crossed under the wires; a public highway. There was an electric light pole near there just a few feet from the road crossing, and we followed the road. The boom was running east and west and *the so* was the derrick. It was running back right across east and west and the derrick was running east and west and the boom was following. It was extending back, when I swung the stacker around to cross the bridge. When we turned the long end of the boom would swing out over the field from my wire fence and under the electric wires. I was not watching the boom as I went along fence there. I was watching my team and couldn't very well watch the team and the boom, too. The photograph, Defendant's Exhibit #3, shows the location of the bridge looking from the west to the east. It shows also how you had to come up across here and around into my barbed wire fence before you made the turn to the road, up close to the fence.

(Defendant's Exhibit #3 is admitted in evidence.)

Redirect Examination.

The defendant company has never paid me anything by reason of the injuries received. I did not make any request of the company to pay me for my injuries.

(Witness examined by the COURT.)

Just before the accident occurred I caught hold of the hemp rope. It was attached to the outside of the stacker on the [44] framework. We had three or four ropes. We had two or three ropes on

(Testimony of Jake M. Shank.)

there, and one of these ropes was a loose end rope. It was hanging from the boom; it was attached to this here. It was just on there for emergency to make it stronger or something, and we had a nail or hook on the side of the stacker that came down here and hooked over there. It was hanging suspended from the butt end of the boom. It was attached to this. This is a pulley. It was not attached to the boom, it was into the pulley. The lower end hung suspended. This was a hook in here and this pulley and this rope were attached and it was raised and lowered and tied down here when we needed it. The one I caught hold of was not attached down here. It was an extra rope for use in emergency. At the time of accident or just before, when I spoke of catching hold of this rope, the mast was, practically speaking, perpendicular with the base of the haystacker. The road is not graded, but goes around a curve and the outside is higher than the inside, and, practically speaking, it was straight up and down. It was not perfectly, it was not as even as the road is in there. The outside of the road was higher than the inside.

With the introduction of the above evidence, the plaintiff rested his case.

At this time Mr. Nugent, one of the counsel for defendant, makes the following motion:

Comes now the defendant company, by its counsel, and moves this Honorable Court to grant a nonsuit in this action in favor of the defendant company, upon the following grounds:

1. Because the plaintiff has failed to show that defendant company was guilty of any negligence causing the injuries received by the plaintiff.

2. Because the undisputed testimony of plaintiff himself [45] shows that he was chargeable with contributory negligence, precluding his recovery.

3. Because the uncontradicted evidence introduced by plaintiff shows that he was chargeable with contributory negligence barring his recovery.

4. Because it appears from the uncontradicted evidence on the part of the plaintiff that he was a trespasser on the property of the defendant company at the time he received the injuries complained of.

Said motion was thereupon argued by counsel for the respective parties. At the conclusion thereof the Court ordered that said motion for a nonsuit be sustained and that this action be dismissed, for the reason that the evidence failed to show that the defendant company was guilty of any negligence causing the injuries received by the plaintiff, and second, for the reason that the evidence in this case shows that the plaintiff was guilty of such contributory negligence as precluded his recovery; to which action of the Court in granting said nonsuit and dismissing said action counsel for the defendant then and there excepted, which exception was by the Court allowed.

The above and foregoing bill of exceptions contains all the evidence affecting the matter of which the exceptions relate and all the material evidence produced upon the hearing and considered by the

Court in passing upon the motion for a nonsuit herein.

The above and foregoing record of proceedings is presented as plaintiff's bill of exceptions on appeal herein.

W. P. GUTHRIE,
ALFRED A. FRASER,
Attorneys for Plaintiff. [46]

Service of a copy of the within and foregoing proposed bill of exceptions admitted this 30th day of April, 1912.

J. F. NUGENT,
S. H. HAYS,
Attorneys for Defendant.

The above and foregoing is by consent of counsel for the respective parties hereby settled and allowed by me as the plaintiff's bill of exceptions on appeal herein.

Dated Boise, Idaho, this 13th day of August, 1912.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed August 13, 1912. A. L. Richardson, Clerk. [47]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

JAKE M. SHANK,

Plaintiff,

vs.

THE GREAT SHOSHONE & TWIN FALLS
WATER POWER COMPANY, a Corpora-
tion,

Defendant.

Petition for Writ of Error.

Comes now Jake M. Shank, plaintiff herein, and says that on or about the 2d day of March, 1912, this Court entered a judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereunto in this case certain errors were committed to the prejudice of the plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this plaintiff prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the said Circuit Court of Appeals.

ALFRED A. FRASER,

W. P. GUTHRIE,

Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 20, 1912. A. L. Richardson, Clerk. [48]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

JAKE M. SHANK,

Plaintiff,

vs.

THE GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corpora-
tion,

Defendant.

Assignment of Errors.

Comes now the plaintiff, Jake M. Shank in the above-entitled cause and assigns errors in the trial and decision of said District Court in said cause as follows:

1.

The said Court erred in sustaining the motion made by counsel for the defendant in error that the Court grant a nonsuit and dismiss said action, and holding that the evidence introduced by the plaintiff failed to prove or tend to prove the cause of action set forth in plaintiff's amended complaint.

2.

The Court erred in holding as a matter of law that the evidence introduced by the plaintiff in the trial of said action established the fact that the defendant was guilty of such contributory negligence as barred his recovery in this suit.

3.

The Court erred in not submitting for determination the issues between the parties to a jury.

4.

The Court erred in taking the case from the jury and directing a verdict for the defendant herein. [49]

Wherefore, the said Jake M. Shank, plaintiff in error, prays that the judgment of the District Court of the United States for the Southern District of Idaho in this cause entered be reversed and that said District Court be directed to grant a new trial in said cause.

ALFRED A. FRASER,
W. P. GUTHRIE,
Attorneys for Plaintiff.

[Endorsed]: Filed August 20, 1912. A. L. Richardson, Clerk. [50]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

JAKE M. SHANK,

Plaintiff,

vs.

THE GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corpora-
tion,

Defendant.

Order Allowing Writ of Error.

This 20th day of August, 1912, came the plaintiff, by his attorneys, and filed herein and presented to the Court his petition for the allowance of a writ of error and assignment of errors intended to be urged by him; praying also that a transcript of the record

and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

ON CONSIDERATION WHEREOF the Court does allow the writ of error upon the plaintiff giving bond according to law in the sum of Three Hundred Dollars (\$300.00).

FRANK S. DIETRICH,
U. S. District Judge.

[Endorsed]: Filed Aug. 20, 1912. A. L. Richardson, Clerk. [51]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

JAKE M. SHANK,

Plaintiff,

vs.

THE GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY, a Corpora-
tion,

Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS, that we, Jake M. Shank, as principal, and the National Surety Company, a New York Corporation, authorized to transact a surety business in the State of Idaho, as surety, are held and firmly bound unto the defendant in error, The Great Shoshone and

Twin Falls Water and Power Company, in the full and just sum of Three Hundred and No/100 (\$300.00) Dollars, to be paid to the said defendant, The Great Shoshone and Twin Falls Water and Power Company, its certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 20th day of August, A. D. 1912.

WHEREAS, lately at a District Court of the United States for the Southern District of Idaho, in a suit depending in said court, between Jake M. Shank, plaintiff, and The Great Shoshone and Twin Falls Water and Power Company, defendant, a judgment was rendered against the said Jake M. Shank, and the said Jake M. Shank having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Great Shoshone and Twin Falls Water and Power Company, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in said Circuit, on the 16th day of September, next.

NOW, the condition of the above obligation is such, that if the said Jake M. Shank shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good, then the

above obligation to be void, else to remain in full force and virtue. [52]

Sealed and delivered in presence of

NATIONAL SURETY COMPANY.

By L. W. ENSIGN, [Seal]

Attorney in Fact.

Approved by

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed Aug. 20, 1912. A. L. Richardson, Clerk. [53]

[Writ of Error.]

In the United States Circuit Court of Appeals for the Ninth Circuit.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable
Judge of the District Court of the United States
for the Southern District of Idaho, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court, before you, or some of you, between James M. Shank, plaintiff, and The Great Shoshone and Twin Falls Water and Power Company, a corporation, defendant, a manifest error hath happened, to the great damage of the said James M. Shank, plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if the

judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, in said circuit, on the 16th day of September next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 20th day of August, A. D. 1912, and in the year of the Independence of the United States of America, the one hundred and thirty-seventh.

Allowed by

FRANK S. DIETRICH,
United States District Judge.

[Seal] Attest: A. L. RICHARDSON,
Clerk of the District Court of the United States, Dis-
trict of Idaho. [54]

Service of within and foregoing Writ of Error ad-
mitted this 20th of August, 1912.

J. F. NUGENT,
S. H. HAYS,
Attorneys for Defendant.

[Endorsed]: No. 345. In the United States Cir-
cuit Court of Appeals for the Ninth Circuit. James
M. Shank, Plaintiff, vs. The Great Shoshone and

Twin Falls Water and Power Company, a Corporation, Defendant. Writ of Error. Filed on return Aug. 20, 1912. A. L. Richardson, Clerk. [55]

[Citation.]

The United States Circuit Court of Appeals for the Ninth Circuit.

The United States of America,
Ninth Judicial District,—ss.

To The Great Shoshone and Twin Falls Water and
Power Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in said circuit, on the 16th day of September next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of Idaho, wherein James M. Shank is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRANK DIETRICH, District Judge of the United States, at Idaho, within said circuit, this 20th day of August, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States of America

the one hundred and thirty-seventh.

FRANK S. DIETRICH,

U. S. District Judge.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

Service of copy of above and foregoing Citation admitted this 20th day of August, 1912.

J. F. NUGENT,

S. H. HAYS,

Attorneys for Defendant. [56]

[Endorsed]: No. 345. The United States Circuit Court of Appeals for the Ninth Circuit. James M. Shank, Plaintiff, vs. The Great Shoshone and Twin Falls Water and Power Company, a Corporation, Defendant. Citation to Defendant in Error. Filed on return August 20, 1912. A. L. Richardson, Clerk. [57]

*In the District Court of the United States for the
Southern Division of the District of Idaho.*

JAKE M. SHANK,

Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS
WATER AND POWER COMPANY,

Defendant.

Order for Transmission of Exhibits.

IT IS HEREBY ORDERED that the original exhibits offered and received in evidence in this case be withdrawn from the files of this court for the purpose of being transmitted to the Circuit Court of

Appeals for the Ninth Circuit, as a part of the record on appeal in said court.

IT IS FURTHER ORDERED that said exhibits be returned to the custody of the clerk of this court upon the termination of said cause in the United States Circuit Court of Appeals.

Dated August 29, 1912.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed Aug. 29, 1912. A. L. Richardson, Clerk. [58]

Return to Writ of Error.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal] Attest: A. L. RICHARDSON,
Clerk. [59]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

JAKE M. SHANK,

Plaintiff,

vs.

GREAT SHOSHONE & TWIN FALLS WATER
POWER COMPANY, a Corporation,
Defendant.

Clerk's Certificate [to Transcript of Record].

I, A. L. Richardson, Clerk of the District Court of the United States, in and for the District of Idaho, do hereby certify that the above and foregoing transcript of pages from 1 to 60 inclusive, contain true and correct copies of the second amended complaint, answer, judgment, bill of exceptions, petition for writ of error, assignment of errors, order allowing writ of error, bond on writ of error, writ of error, citation, order for transmission of original exhibits, return to writ of error, and clerk's certificate, in the above-entitled cause, which together constitute the transcript of the record and return to the annexed writ of error.

I further certify that the cost of the record herein amounts to the sum of \$38.40, and that the same has been paid by the plaintiff in error.

Witness my hand and the seal of said District Court, affixed at Boise, Idaho, this 30th day of August, 1912.

[Seal]

A. L. RICHARDSON,
Clerk. [60]

[Endorsed]: No. 2178. United States Circuit Court of Appeals for the Ninth Circuit. Jake M. Shank, Plaintiff in Error, vs. The Great Shoshone and Twin Falls Water Power Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Idaho.

Filed September 4, 1912.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

2

In the United States
Circuit Court of Appeals
For the Ninth Circuit

JAKE M. SHANK, Plaintiff in Error,
vs.
THE GREAT SHOSHONE & TWIN FALLS WATER
POWER COMPANY, Defendant in Error.

Brief of Plaintiff in Error

Upon Writ of Error to the United States District Court
of the District of Idaho, Southern Division.

STATEMENT OF THE CASE.

This is an action brought by the plaintiff in error to recover from the defendant damages for injuries which he alleges to have received by reason of the negligence of the defendant in error. The facts as set forth in the complaint are in substance as follows:

That the defendant in error is a corporation and a citizen of the State of Delaware, engaged in the business of

generating electrical power for lighting and other purposes, and is the owner of and in control of a certain high tension power line, carrying a voltage of 22,000 to 23,000 volts, for the purpose of transmitting electricity for lighting and power purposes. That the matter in dispute exceeds the sum of two thousand dollars, exclusive of interest and costs. That the wires of this power line at the place of the accident were not properly insulated and that they were not elevated sufficiently high at that point to permit of the free and unobstructed use of the highway. That while the plaintiff in error was driving along the highway a certain vehicle or machine known as a hay-stacker, the top of said hay-stacker came in contact with the wires of the defendant company and that the electricity escaping from said wires down along said hay stacker injured the plaintiff in error; that hay-stackers similar to the one in question were in common use and were frequently transported over and along the highways in the vicinity of the accident and prior thereto; that the plaintiff in error was using due care and caution on his part at the time of the accident and that defendant in error was guilty of negligence in not properly insulating its wires and in not suspending them a sufficient height from the highway to permit of the passage thereunder of said hay-stacker. That the plaintiff has been damaged by reason of the injuries which he received in the sum of thirty thousand dollars (\$30,000).

The defendant in error filed its answer admitting the incorporation and citizenship of the defendant in error; that the amount in dispute exceeded two thousand dollars exclusive of interest and costs; admitting that it was the owner and did operate and control the poles and wires as

mentioned and set forth in the second amended complaint, and admitting that upon the date of the accident it transmitted over and along its wires a strong and powerful current of electricity, dangerous to the life of any human being who might come near or in contact therewith, and denying the other material allegations of said second amended complaint.

Upon these issues the case was called for trial; and we contend that the plaintiff upon his behalf introduced evidence tending to establish his cause of action, and sufficient at least to be entitled to have a jury pass upon the questions involved. We shall not attempt in this statement of the facts to give more than an outline and a brief statement of the evidence, which we claim is sufficient to establish a *prima facie* case on the part of the plaintiff.

Elmer Bird, called as a witness on behalf of the plaintiff testified that his business or occupation is that of a civil engineer; that plaintiff's Exhibits "A" and "B" were made by the witness from a survey of the ground at the point of the accident; that he made measurements of the height of these wires from the ground at different points; that at point "A" the wire was practically 29½ feet from the ground according to scale; that at the point "B" it was just about thirty feet and six inches; at point "X" the wire was 27 feet and 6 inches, not considering the sag; that there is quite an elevation of the ground from point 'A' to point 'X'; it is going down hill pretty rapidly there, practically five feet in drop in about 125 feet of distance. In other words, the point 'X' would be about five feet higher than the point 'A'—the contour of the ground—the elevation at that point [ir. p. 18]. Witness continues and testifies: "At the time I was there none of

these wires were insulated. We measured the height of the poles for an interval of either four or five poles west of this point and one pole east. They were varying from $29\frac{1}{2}$ feet to the top of the bottom wire up to thirty-one feet. I found no other place which measured where the wire was so close to the ground as it was at the point marked 'X'—27 feet and 6 inches." (tr. p. 20).

W. H. Harrey, a witness called on behalf of plaintiff, testified: "On or about the 8th day of August, 1910, I was residing immediately across the road from the plaintiff's home. I went up to the point of the accident shortly afterwards, within a minute I should say (tr. p. 23). I noticed the hay-stacker that Mr. Shank was driving at the time of the accident (tr. p. 24). I am familiar with hay-stackers of that kind. At the time I first looked and noticed it the boom on the top of the hay-stacker was horizontal, it was not raised up. At the time I had seen a number of hay-stackers similar to the one Mr. Shank was driving in that vicinity and around in that country; they were very common. I have noticed them being transported up and down the highways of that country and they were at that time. The hay-stacker was being driven west along the road at the time of the accident. In driving west along that road it is necessary to pass under the wires of the defendant company in order to cross the bridge in the road. It is impossible to go along the road without going under those wires (tr. p. 25). I measured the height of the wires at the point of the accident. My measurement was 27 feet 3 inches from the wire to the ground at the point of the accident (tr. p. 26)." On cross-examination he testifies in regard to these stackers: "Nearly everybody that I know had one similar, that is, the outline was similar. I

don't know the length of the booms on them or whether they worked on this hinge. These stackers are not generally kept on the farm (tr. p. 28); they had to depend on each other for help. They would swap derricks and swap machinery, and that necessitated moving back and forth. They practically all had them, either as individuals or as neighbors—community property. I had seen stackers hauled along the road prior to the time Mr. Shank was hurt I would estimate ten or fifteen times (tr. p. 29).

A. F. McCuskey, called as a witness on behalf of plaintiff testified that he is a practicing physician and surgeon and was called upon about the 8th day of August, 1910, to visit Mr. Shank. The witness then testifies as to the extent of the injuries received by Mr. Shank and to the fact that in passing along the road where the accident occurred it was necessary to pass under the wires of the defendant company, and at page 33 of the transcript, he testifies: "I know what a hay-stacker is in a general way; I have noticed a great many of them down in that country. On or about August 8th, 1910, I have seen them up and down the public road. It was not at all uncommon to find them moving,—in fact, a great many men own land on both sides of the same road and move them back and forward to the crops."

H. H. Freedheim, called as a witness on behalf of plaintiff, testified that his business and occupation for a number of years had been electric wiring and construction and contracting and that he is what is known as an electrician, and has been engaged in these various occupations for twenty-two years. He also testified that there is a standard recognized by electricians who are in charge or control of the construction of long distance and other

power lines conducting electricity for power and lighting purposes, as to the height of the poles that should be used in a country similar to this in which the accident occurred. The standard recognized by engineers and parties in charge of the construction of power lines such as this, and in a country such as this is, as to the height of the poles that should be used along these highways, is from thirty-five to fifty feet according to the "authorities I have seen and I know this outside of the authorities, that it is the practice to use poles about forty feet in length for high tension lines. In the construction of these power lines, poles of different lengths, depending on the contour of the country, are used. A country that is traversed sometimes goes up and down small variations and it is the object of using different lengths to keep the top of the wire on a grade, to keep it level as much as possible (tr. pp. 36-37)." On cross-examination he testified: "A forty-foot pole would be practically standard for high tension wire line construction. That means a pole measured from the top to the bottom, forty feet. The pole would ordinarily be put into the ground between six and eight feet, sometimes five feet; that is standard construction for ground that is made of rock or if the earth at that point is rock; if it is ordinarily solid, about five and a half feet or six feet. If I had a forty-foot pole I would put it into the ground about eight feet, probably six, that is, if it was solid (tr. p. 37)." And again, he testified (tr. p. 39): "On a forty-foot pole the first cross-arm might be ten to eighteen inches below the top of the pole. If I was going to have a high tension wire strung to carry a voltage of 22,000 or 23,000 volts and wanted to put the wires a sufficient distance apart, I would put the cross-arm thirty to forty inches below the

wire on a proper insulator on the top of the pole. Out on the end of the cross-arm I would put a pin and an insulator, and for that voltage, the top of the insulator would be in the neighborhood of twelve to fourteen inches above the cross-arm." "I would put a cross-arm down from twenty to forty inches; if I wanted to be safe, I would put it thirty inches." (tr. p. 40).

Charles Coker, called as a witness on behalf of plaintiff, testified that he was familiar with that part of the country shown in plaintiff's Exhibit "A;" that he had charge of the building of the bridge in 1906, which is shown on that exhibit; that the last time he saw the bridge was on March 3, 1912, and at this time it was the same in regard to its location and elevation as it was at the time it was built; that at the time he constructed this bridge, the defendant company did not have its electric wires or poles along that road; that he had seen hay stackers around that country prior to August 8th, 1910, that there were quite a few of them in that vicinity (tr. p. 41).

F. E. Chamberlain, a witness called on behalf of plaintiff testified that "in driving west along the road to cross over the bridge it was necessary to pass under the wires of the defendant company in driving by them on and off that bridge. I know what is known as a hay stacker. I have seen a good many of them. I have seen them around the vicinity of the bridge and various places on the tracks since 1906. I have seen them on the highways at that time and both prior and since" (tr. p. 43).

Jake M. Shank, the plaintiff, testified as a witness that he lived in the neighborhood of about two hundred yards west of the bridge near where the accident occurred; that on the morning of the accident he left his house and went

down after the stacker. His hired man went with him. And the witness testifies (tr. p. 44): "We had four horses hitched on to it. After we hitched on to it we went south under the power line and up the road west. Before I came to the point where the accident occurred I had passed under the wires of the defendant company; the line of wires shown on Exhibit "A." about, probably, three hundred yards west, I passed under the line. I passed straight along underneath them and then turned on the road. From the point of the accident it was probably three or four hundred yards down the road where I had crossed under the wires. I had no difficulty in going under the wires at that place. At the time of the accident I was standing outside of the derrick, on the south side of the derrick, away from the wires. We pulled up to the bridge up the road and stood in the road and I was driving the inside team next to the wire fence and was right up against the wire. The hired man had to pull his team about four or five inches to square the derrick and he had to pull right in towards my team and I got out from the fence away from the horses and stood on the south side of the derrick and I stopped outside of the derrick and asked him if he was already and he said "Yes," and just as I said that I threw my arm up and grabbed the manila rope there, and just as I grabbed it there was a flash and blinded me and the wire swung and hit me on the arm, the wire cable. I was conscious after that but could not see or holler, could not do anything at all. I was hanging on that wire and was drawn up in a knot you might say. I could feel the electricity going out all over me and I could hear the popping of the electricity" (tr. p. 45). And again, "This same derrick passed under those wires at a

point east of the accident. I did not pass under them myself but I was there when Mr. Van Hoy and his hired man took the same derrick out east of this same pole; that was on the 22nd day of July, 1910. This same derrick had passed under those wires to my knowledge three times besides these times which I have testified to. We pulled it out under the wires twice when I was present, west of my place on my place about, I should say, four hundred yards west of where the accident happened, and Mr. Van Hoy I have seen pull it out once or twice through there at different points on the line. On the morning when I brought the derrick out the boom was in a horizontal position—it was fastened in that position—it was tied by the other end" (tr. p. 46). And again, "The highest point of the pole of that derrick is about 27 feet 5 or 6 inches, I should say; we measured it." And again, "I had passed under the wires and had noticed this derrick pass under it the times I have mentioned and the pole cleared the wires in each case. Mr. Van Hoy built the stacker first and I helped him remodel it in 1910, prior to the accident. We had been told that the wires were thirty feet above and we had to build some kind of a derrick so that we could get the derrick under the wires without having them taken off and consequently we built the derrick between 27 and 28 feet so that we would not have any interference, no trouble with it at all. I have lived on my place since about the 15th of April, 1906. Prior to August 8th, 1910, the time of my accident, I had seen hay stackers similar to mine in that vicinity; I had seen them transported up and down the highways in that vicinity (tr. p. 47)."

The foregoing statement of facts is only a brief synopsis of the kind and character of evidence which was introduced on behalf of the plaintiff. The record shows that in the testimony of the witnesses there were some inconsistencies, or perhaps, contradictions, but even if this were so, the weight to be given to the evidence and the reconcilments to the contradictions or any inconsistencies were questions that were exclusively within the province of the jury to decide.

Assignment of Errors.

1.

The Court erred in granting the defendant's motion for a non-suit herein, for the reason that the law does not permit a United States court to grant an involuntary non-suit against the plaintiff.

2.

The Court erred in holding that the plaintiff had failed to show that the defendant company was guilty of any negligence, causing the injuries received by the plaintiff.

3.

The Court erred in holding as a matter of law that the evidence introduced on behalf of the plaintiff showed that he was chargeable with contributory negligence sufficient to preclude his recovery in this action.

The Court erred in entering its judgment granting the motion of the defendant for a non-suit and dismissing the plaintiff's action herein.

ARGUMENT.

First, we contend that the District Court was not authorized to grant a peremptory non-suit against the plaintiff at the close of the plaintiff's case, and in support of this contention, we call the Court's attention to the case of *Northern Pacific Railway Co. v. Charless*, 51 Fed. 562, in which this Court, in an opinion delivered by Mr. Justice Morrow, at page 571, announces the rule as follows:

"When the plaintiff had closed his testimony and rested his case, counsel for defendant moved the Court for an order dismissing the case, and for the non-suit of the plaintiff. The motion was denied, and the action of the Court in denying the motion is claimed as error. The refusal of the Court to grant this motion was in accordance with the established practice. It has been repeatedly decided by the Supreme Court that courts of the United States have no power to order a peremptory non-suit against the will of the plaintiff. *Elmore v. Grymes*, 1 Pet. 469; *De Wolf v. Rabaud*, Id. 476-496; *Crane v. Morris' Lessee*, 6 Pet. 598-610; *Silsby v. Foote*, 14 How. 218-222; *Castle v. Bullard*, 23 How. 172-183. It is also assigned as error that the Court should not have required defendant to proceed to its defense after plaintiff had rested his case, but should have directed the jury to return a verdict in favor of the defendant. That motion, however, does not appear, by the bill of exceptions, to have been made by counsel for defendant; besides, he proceeded with the defense, and introduced testimony in that behalf. This action on his part effectually disposed of all question of error. The refusal of the Court to instruct the jury at the close of plaintiff's evidence that he was not entitled to recover could not be assigned as error, even if the proper motion had been made, because the defendant, at the time of requesting such instruction, had not rested its case, but afterwards went on, and introduced evidence in its own behalf. *Railway Co. v. Cummings*, 106 U. S. 700, 701, 1 Sup. Ct. Rep. 493; *Insurance Co. v. Crandal*, 120 U. S. 527-530, 7 Sup. Ct. Rep.

685; *Robertson v. Perkins*, 129 U. S. 233-236, 9 Sup. Ct. Rep. 279."

We desire to call the Court's attention to the rule which should govern the trial judge when called upon to grant a non-suit or direct a verdict for the defendant at the close of the plaintiff's evidence, and shall confine ourselves to the rule as announced by the federal courts. In the case of *Rochford v. Pennsylvania Co.*, 174 Fed. 81, a case decided by the Court of Appeals of the Sixth Circuit, that Court, by Mr. Justice Lurton, announced the rule as follows:

"In support of the action of the Court in directing a verdict, two points have been urged: First, that Rochford's evidence as to what he was doing when struck by the engine is in conflict with the allegations of his petition and other conceded or demonstrable facts of the situation; and, second, is self-contradictory upon vital points. We may lay upon one side any question of the credibility of Rochford as a witness, either because he contradicts himself, or because he is contradicted by other witnesses as to the facts material to a verdict in his favor.

"A motion for an instructed verdict, upon an insufficiency in law of the evidence, presupposes that the witnesses testifying to the facts adduced to make a case for the party against whom the motion is made are worthy of credit. It is as if the party making the motion had demurred to the evidence and is equivalent to saying: 'We concede the truth of the facts which are relied upon to make a case for the plaintiff, or a defense for the defendant; but they are insufficient in law to support a verdict which must be founded upon such facts.' The credibility of a witness is peculiarly a question for the jury, under proper instructions by the Court. 1 *Greenleaf on Evidence* (14th Ed.) Par. 10; 6 *Cyc.* p. 694. Neither is the mere fact that there is a preponderance of the evidence in favor of the party moving for an instructed verdict enough to require the judge to take a case

from the jury, even though it might justify a new trial. *City, etc., Ry. v. Svedborg*, 194 U. S. 201, 24 Sup. Ct. 656, 48 L. Ed. 935; *Mt. Adams, etc., Ry. v. Lowery*, 74 Fed. 463, 20 C. C. A. 596. If the plaintiff has produced material evidence, sufficient, if believed and uncontradicted, to warrant a verdict, no amount of contradictory evidence will authorize a trial judge to take the question of its effect and weight away from the jury. *Railroad Co. v. Slattery*, 3 App. Cases 1155; *Insurance Company v. Doster*, 106 U. S. 30, 32, 1 Sup. Ct. 18, 27 L. Ed. 65; *Pleaseants v. Fant*, 22 Wall. 116, 22 L. Ed. 780."

In the case of *Janoski v. Northwestern Improvement Co.*, 176 Fed. 215, this Court, by Mr. Justice Ross, announces the rule as follows:

"As a matter of course the Court cannot, in such cases, undertake to weigh conflicting evidence, and the law is well settled that in passing upon a motion to take a case from the jury, it is the duty of the Court to take 'that view of the evidence most favorable to the party against whom it is moved to direct a verdict, and from that evidence, and the inferences reasonably and justifiably to be drawn therefrom, determine whether or not, under the law, a verdict might be found for the party having the onus.' *Mt. Adams & E. P. Inclined Railway Company v. Lowery*, 74 Fed. 463, 20 C. C. A. 596; *Jenkins & Reynolds Company v. Alpena Portland Cement Company*, 147 Fed. 641, 77 C. C. A. 625, and numerous cases there cited."

"The question of negligence is one of law for the Court only where the facts are such that all reasonable men must draw the same conclusion from them, or, in other words, a case should not be withdrawn from the jury unless the conclusion follows as matter of law that no recovery can be had upon any view which can be properly taken of the facts the evidence tends to establish. *Grand Trunk R. Co. v. Ives*, 144 U. S. 408, 417, 36 L. Ed. 485; *Texas, etc., R. Co. v. Cox*, 145 U. S. 593, 606, 36 L. Ed. 829; *Gardner v.*

Michigan Cent. R. Co., 150 U. S. 349, 361, 37 L. Ed. 1107."

"Negligence only becomes a question of law to be taken from the jury when the facts are such that fair-minded men can only draw from them the inference that there was no negligence. If fair-minded men, from the facts admitted, or conflicting testimony, may honestly draw different conclusions as to the negligence charged, the question is not one of law but of fact, and to be settled by the jury under proper instructions. *Richmond, etc., R. Co. v. Powers*, 149 U. S. 43, 37 L. Ed. 642; *Northern Pac. R. Co. v. Everett*, 152 U. S. 107, 38 L. Ed. 373; *McDermott v. Severe*, 202 U. S. 600, 604, 50 L. Ed. 1162."

Landis v. Atchison D & B. R. Co., 193 Fed. 867

In the case of *Mt. Adams & E. P. Inclined Ry. Co. v. Lowery*, 74 Fed. 463, a decision of the Circuit Court of Appeals of the Sixth Circuit, the Court say:

"Neither is it a proper standard to settle for a peremptory instruction that the Court, after weighing the evidence in the case, would, upon a motion for a new trial, set aside the verdict. The Court may, and often should, set aside a verdict, when clearly against the weight of evidence, where it would not be justified in directing a verdict. Neither do we understand this view to be in conflict with anything decided by the Supreme Court. When that Court said in *Insurance Co. v. Doster*, cited heretofore, that a case should not be withdrawn from the jury 'unless the testimony be of such a conclusive character as to compel the Court, in the exercise of a sound judicial discretion, to set aside a verdict returned in opposition to it,' it did not mean to define the limits within which a trial judge might and ought to grant a new trial because against evidence, or against the weight of evidence. Many cases occur, in the history of nisi prius trials where a new trial ought to be granted because the verdict is clearly against the weight of evidence, when it would have been erroneous to have directed a verdict in the first instance."

Keeping in view the rule of law as above announced by which a trial judge should be governed in passing upon an application for a directed verdict, we will call the Court's attention briefly to some of the facts in evidence which we contend were sufficient to justify the jury in finding the defendant guilty of the negligence charged in the complaint. The witness Freedhein, an electrical engineer, who testified to large experience in the construction of high power transmission lines, stated: "In the construction of these power lines, poles of different lengths, depending on the contour of the country, are used. A country that is traversed sometimes goes up and down small variations and it is the object of using different lengths to keep the top of the wire on grade, to keep it level as much as possible." Now, in the case at bar, if this method had been followed by the defendant company, the height of its wires at the point of the accident would have been the same as at the other points along the line and of sufficient height to have permitted this stacker to pass under the same without any danger of contact with the wires. Again, the witness testified that "the standard recognized by engineers in the construction of power lines such as this and in a country such as this, as to the height of the poles that should be used along these highways, is from thirty-five to fifty feet." And again, he testified on cross-examination that a forty-foot pole would be practically standard for high tension wire construction; that the pole would ordinarily be put in the ground between six and eight feet, sometimes five feet. And again, he testified in regard to the proper construction of this power line that he would put a cross-arm down from twenty to forty inches; if he wanted to be safe, he would put it

thirty inches, and on the end of the cross-arm he would put a pin and an insulator and, for the voltage carried by this company, the top of the insulator would be in the neighborhood of twelve to fourteen inches above the cross-arm.

Now, taking this statement of the witness, if the defendant company used a forty-foot pole and the same was put in the ground to a depth of six feet, that would leave thirty-four feet of the pole above the ground, putting the cross-arm down thirty inches from the top of the pole and then on the end of this cross-arm, placing a pin twelve inches high with the insulator on it, to which the lower wire is attached, the lower wire would then be thirty-two feet and six inches above the ground. This is an elevation of one foot greater than the elevation of the wires of the defendant company at any point which was measured and testified to upon the trial and amply sufficient to permit this hay-stacker to pass under the same without any contact therewith.

Now, it is true that this witness, like many another witness who was not used to court proceedings, may have made statements somewhat at variance with those just quoted above, but that was a matter for the jury to reconcile and not the Court, as was said by the Court in the case of *Rochford v. Pennsylvania Co.*, *supra*.

"We may lay upon one side any question of the credibility of Rochford as a witness, either because he contradicts himself or because he is contradicted by other witnesses as to the facts material to a verdict in his favor."

And again, the Court say:

"The credibility of a witness is peculiarly a ques-

tion for the jury under proper instructions by the Court."

And again,

"If the plaintiff has produced material evidence sufficient, if believed and not contradicted, to warrant a verdict, no amount of contradictory evidence will authorize a trial judge to take the question of its effect and weight away from the jury."

The evidence in the case discloses the fact that this stacker was constructed by the plaintiff with the knowledge upon his part that the same would pass under the wires of the defendant company and that it did pass under these wires at other points along the line and if the wires of the company had been kept upon grade as the witness Freedhein stated they should be, this accident would probably not have occurred. The evidence in the case establishes the fact that these hay stackers were in common use in that country at the time of and prior to the accident and we contend, therefore, it was the duty of the defendant company to anticipate that these hay stackers, while being transported along the highways, might come in contact with its wires and persons be injured thereby. Their use of the highway was not exclusive and we know of no reason or any law why farmers in a community should not be permitted to transport their hay stackers along the public highways without being in constant danger from contact with the wires of this company. The evidence discloses the fact that on account of the contour of the ground, that at the point of the accident, the road was elevated some four or five feet, and we contend that in the construction of this power line the company should have noticed that at the point where their wires were sus-

pended over the highway that such elevation existed and provide accordingly for the elevation of those wires at that point.

Again, the witness, Elmer Bird, an electrician, testified that these wires were not insulated. This fact alone has been held by the courts to establish *prima facie* a case of negligence. In the case of Colusa Parrot Mining & Smelting Co. vs. Monahan, 162 Fed. 276, this Court, by Judge Ross, say:

"There could have been no better evidence of the improper insulation of the wire in question than the shock the plaintiff received from touching it: At points or places where people have the right to go for work, business, or pleasure the insulation and protection should be made as nearly perfect as reasonably possible, and the utmost care used to keep them so. Authorities, *supra*. See also, Haynes vs. Raleigh Gas Co. 114 N. C. 203, 19 S. E. 344, 26 L. R. A. 810, 41 Am. St. Rep. 786; Atlanta Con. St. R. Co. vs. Owings, 97 Ga. 663, 25 S. E. 377, 33 L. R. A. 798; Thompson's Commentaries on the Law of Negligence, par. 800."

In Gregory vs. Adams, 14 Gray, 242, it was held to be question for the jury as to whether or not an elephant was a proper animal to drive over a highway.

In Commonwealth vs. Allen, 148 Pa. 358, it is held that the question whether a particular use of a public highway is unreasonable use is a question of fact for the jury. Citing Allegheny vs. Zimmerman, 95 Pa. 287.

"An electric light company which maintains its wires in a public highway is bound to adopt the best precautions against danger, in general use, which experience has shown to be effectual, and to avail themselves to every such known safeguard, or generally approved invention, so as to lessen the danger to persons lawfully using the highway."

Eagle Hose Co. vs. Elec. Light Co. 33 Pa. Supr. Ct. 581.

See same point Colo. Elec. Co. vs. Soper, 88 Pac. 161 (Colo.).

"A company maintaining wires for the purpose of supplying light and power must exercise the utmost care at places where persons may reasonably be anticipated to go for work, pleasure or business, to prevent injury, and that at such places a company is bound perfectly to insulate and protect its wires from contact, and to maintain them in that condition."

Rowe vs. Taylorville Elec. Co. 114 Ill. App. 535.

Judgment affirmed, 72 N. E. 711 (Ill.).

We think it unnecessary to burden this record or take the time of the Court with the citation of the many and various cases in which accidents have occurred from persons coming in contact with electric wires, but will cite the Court to a few cases wherein the question of negligence and contributory negligence under a state of facts somewhat similar to the facts in this case were submitted to the jury and a verdict for the plaintiff sustained. In the case of Winegarner vs. Edison Light & Power Co. 109 Pac. 778, the facts were that the plaintiff was engaged in moving a house along the street of a city and the comb or roof of the building was higher than the wires and the plaintiff went upon the roof of the house and took hold of the wire in order to raise it up sufficiently high for the house to pass under. He was immediately killed by the shock, the wires being charged with a voltage of 23,000; and the Supreme Court of Kansas in the opinion say:

"There is evidence that the company had notice of the moving of this building. Whether it had notice

of its passing the particular point where the accident occurred or not, is not shown, but there is evidence tending to show that the moving of buildings was of so frequent occurrence that the defendant must have taken notice of such use of the streets. . . . If, from all the circumstances, the defendant had reason to apprehend that the building would be moved under the wires where the accident occurred, it was its duty, knowing its wires to be highly charged with electricity, to have such wires at the street crossing insulated, or to take such other precautions as might be necessary, to protect any one who might be liable to be upon such building from contact or injury from such wires. The case was submitted to the jury under proper instructions, and we think that the jury were amply justified by the evidence in finding that the defendant was guilty of negligence, which caused the death of the deceased, and that the deceased was not guilty of contributory negligence."

In the case of *Nelson vs. Branford Lighting & Water Co.* 54 Atl. 303, the Court say:

"In determining what precautions against danger to human life were reasonably necessary, it was bound to consider all the uses to which the bridge was customarily put. It is found that it was convenient to the defendant to have the wires no higher above the truss; but convenience in such a matter is a subordinate consideration. The bridge, as part of a public highway, was open to general public use. Under the law of this State the purposes of a highway are not regarded as wholly restricted to serving the right of passage. He who is standing on one as a mere sight-seer, to gratify his curiosity, is rightfully there. *Bumel vs. Berlin Iron Bridge Co.* 66 Conn. 24, 36, 33 Atl. 533."

So in this case we contend that the defendant company was bound to consider that the public highway might be used for the purpose of transporting these hay stackers

back and forth, and that the same would be moved under their wires at the point of the accident and elsewhere.

In the case of *Birsch vs. Citizens' Electric Co.* 93 Pac. 940, the plaintiff was a hod carrier and, while working upon a building, came in contact with the electric wires of the defendant company at a distance of twenty to twenty-two feet above the ground, the wires and poles of the electric company being three or four feet from the wall upon which the plaintiff was working. He recovered a judgment and the judgment was affirmed.

"Where a boy climbs a chestnut tree standing on a sidewalk and is injured by coming in contact with a defectively insulated electric wire, he can recover against the electric light company, where the tree was on the premises not belonging to the company, the defective insulation had continued from four to six months, and children were accustomed to play around the tree and to climb in it."

Mullen v. Wilkesbarre Gas & Elec. Co., 77 Atl. 1108 (Pa.)

The case of *Clough v. Rockingham County Light & Power Co.*, 71 Atl. 223, is another case in which a house was being moved along a street of the city and one of the wires of the defendant company in that case caught on the top of the building and the plaintiff attempted to remove the wire therefrom and was injured; and the Court held that the trial court properly refused to enter a nonsuit in the case.

In *Mullen v. Wilkesbarre Gas & Elec. Co.*, 77 Atl. 1108, in the opinion the Court say:

"In *Fitzgerald v. Edison Electric Co.*, 200 Pa. 540, Mr. Justice Mitchell, defining the obligation of those who introduce into a community that dangerous

agent known as electricity, said: 'The company, however, who uses such a dangerous agent (a wire charged with an electric current) is bound not only to know the extent of the danger, but to use the very highest degree of care practicable to avoid injury to everyone who may be lawfully in proximity to its wires and liable to come accidentally or otherwise in contact with them.' In this carefully chosen language quoted and adopted in *Doltry v. Media Electric Light Co.*, 208 Pa. 403, our highest judicial tribunal has plainly defined the measure of defendant's obligation and described the class to every member of which the law extends the protection that would be secured by the faithful discharge of that obligation. Why was not the plaintiff in that class? Upon what theory can the defendant successfully contend that he was not lawfully in proximity to its wires?"

For the reasons above stated, counsel for the plaintiff in error pray this Honorable Court that the judgment of the trial court may be reversed and the cause remanded for trial, and that the plaintiff in error recover his costs herein.

Respectfully submitted,

ALFRED A. FRASER and

W. P. GUTHRIE,

Attorneys for Plaintiff in Error.

In the United States
Circuit Court of Appeals
For the Ninth Circuit

JAKE M. SHANK, Plaintiff in Error,

vs.

**THE GREAT SHOSHONE & TWIN FALLS WATER
POWER COMPANY, a Corporation, Defendant
in Error.**

Brief of Defendant in Error

**Upon Writ of Error to the United States District Court
of the District of Idaho, Southern Division.**

STATEMENT OF FACTS.

This is an action for damages arising out of personal injuries received by plaintiff in error from coming in contact with an electric wire of defendant in error while dragging a hay stacker along a country road, or highway, in Twin Falls County, Idaho, on the 8th day of August, 1910.

On said day, defendant in error was conducting and for a long time prior thereto had conducted over said wire a

powerful current of electricity of the voltage of about 23,000 volts, for the purpose of furnishing light and power to a large number of persons and for other purposes.

The point along said road at which the injuries complained of by plaintiff were received was not within the limits of any city, town or village, incorporated or unincorporated.

Said road traversed a new irrigation project known as the Twin Falls Carey Act Project and water had been turned onto the lands in the vicinity of the place where the accident occurred, in 1906, before which time said land had been covered with sagebrush (Tr. pp. 30 and 42).

The electric line of defendant in error was constructed in 1908, and was constructed in accordance with the standard fixed by electrical engineers, as shown by the testimony of plaintiff's witness, Freedhein. The wires were not insulated.

At the time defendant's electric line was built plaintiff was residing on his ranch near the scene of the accident and continued to reside there up to the time he was injured. The electric light poles were practically against his fence and he was compelled to go under the wires to get into his place. He saw the wires frequently, knew that they were charged with electricity and that it was dangerous to come in contact with them (Tr. p. 48).

On the 8th day of August, 1910, plaintiff and Moran, his hired man, hitched four horses abreast onto the hay stacker and dragged the same up the road to the bridge where the accident occurred. The mast on the stacker was about twenty-seven (27) feet six (6) inches high, and it carried a boom about thirty-eight (38) or forty (40) feet long, twelve (12) or thirteen (13) feet of which was

on one side of the mast and the remainder on the other (Tr. p. 50). The boom is fixed to the mast at a height of about twenty-two (22) feet (Tr. p. 49). The long end of the boom works on a hinge whereby the pole is moved up and down to accommodate itself to the varying height of the hay stacks (Tr. p. 50). Just before reaching the bridge the road makes a turn and the long end of the boom swung out under the electric light wires (Tr. p. 54), and when plaintiff reached the bridge he left the team he was driving and which would have to be quieted, and which was on the north side of the stacker, and, after dropping the lines, went to the south side of the stacker (Tr. p. 57). He asked Moran if he was ready to pull his end of the stacker square with the bridge, and being answered in the affirmative he took hold of a manila rope (Tr. p. 52) which was hanging from the butt end of the boom (Tr. p. 55), when a flash came, the wire cable on the derrick struck him and he was "drawn up in a knot" (Tr. p. 45). Moran released him from the cable; the horses ran away; the derrick knocked both men down and they were dragged under it to the north side of the bridge (Tr. p. 46). Plaintiff was injured as testified to by his witnesses Dr. McCluskey and Harvey.

The accident was caused by the long end of the boom coming in contact with defendant's electric wire (Tr. pp. 27 and 30). The nearest point under the electric wire from the bridge is five (5) or six (6) feet (Tr. p. 30). Plaintiff was not watching the boom as he went along the fence and up to the bridge, and testified, "I was watching my team and couldn't very well watch the team and the boom too" (Tr. p. 54).

No other person was injured by coming in contact with defendant's wires along that road either before or after plaintiff was hurt (Tr. pp. 34 and 44).

There were no other stackers in that section of the size of the one that plaintiff in error was transporting at the time he was injured (Tr. pp. 27 and 28; 41 and 42).

Harvey said but three men whom he could name dragged hay stackers along the road, and they were plaintiff, Van Hoy and Matthews, and the stacker they were dragging was the one plaintiff had at the time he was injured (Tr. p. 29).

The wagon road was established when plaintiff located on his ranch in 1906 and was supposed to be 50 feet wide from fence to fence. The north side of the road where a team is made to go onto the bridge was against plaintiff's fence (tr. p. 48).

At the close of plaintiff's case the Court granted defendant's motion for non-suit.

ARGUMENT.

The assignments of error are three in number, the first of which is based upon the erroneous assumption that the law does not authorize or permit Federal courts to grant an involuntary non-suit against a plaintiff.

This being an action for damages for personal injuries is an action at law, in which, in questions of "practice, pleadings and forms and methods of proceeding," United States courts are required to conform "as near as may be" to those of the courts of the State in which the trial is had.

Rev. Stats. Sec. 914.

Sec. 4354, Revised Codes of Idaho (1908), reads as follows:

"An action may be dismissed, or a judgment of non-suit entered, in the following cases: * * * 5. By the court, upon motion of defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury."

The rules of practice of the United States Circuit Court for the Ninth Circuit, District of Idaho, provide, Rule 60:

"The defendant in an action at law, tried either with or without a jury, may either at the close of the plaintiff's case or at the close of the case on both sides, move for a non-suit. The procedure on such motion shall be as follows: The defendant, or his counsel, shall state orally in open court that he moves for a non-suit on certain grounds, which shall be stated specifically. Such a motion shall be deemed and treated as assuming for the purposes of the motion (but for such purposes only) the truth of whatever the evidence tends to prove, to wit, whatever a jury might properly infer from it. If, upon the facts so assumed to be true as aforesaid, the Court shall be of the opinion that the plaintiff has no case, the motion shall be granted and the action dismissed."

In *Coughran vs. Bigelow*, 164 U. S. 301, the Court, speaking through Mr. Justice Shiras, said:

"The ruling of the Supreme Court of the territory of Utah in affirming the action of the trial court ordering a non-suit of plaintiffs is assigned as error. It was held by this Court in *Elmore v. Grymes*, 26 U. S. 1 Pet. 469, that a circuit court of the United States had no authority to order a peremptory non-suit against the will of the plaintiff. This case has been followed in repeated decisions. *Crane v. Morris*, 31 U. S. 6 Pet. 598; *Castle vs. Bullard*, 64 U.

"The foundation for those rulings was not in the constitutional right of a trial by jury, for it has long been the doctrine of this Court that in every case, before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury can properly proceed to find a verdict for the party producing it upon whom the onus of proof is imposed, and that, if the evidence be not sufficient to warrant a recovery, it is the duty of the Court to instruct the jury accordingly, and, if the jury disregard such instruction, to set aside the verdict. *Parks vs. Ross*, 52 U. S. 11 How. 362; *Schuchardt vs. Allen*, 68 U. S. 1 Wall. 359; *Pleasants vs. Fant*, 89 U. S. 22 Wall. 120. And, in the case of *Oscanyon v. Winchester Repeating Arms Co.* 103 U. S. 264, it was said by Mr. Justice Field, in delivering the opinion of the Court, that the difference between a motion to order a non-suit of the plaintiff and a motion to direct a verdict for the defendant is 'rather a matter of form than of substance.'

"That the cases above cited, which held that the circuit court of the United States had no authority to order peremptory non-suits, were based, not upon a constitutional right of a plaintiff to have the verdict of a jury, even if his evidence was insufficient to sustain his case, but upon the absence of authority, whether statutory or by a rule promulgated by this Court, is shown by the recent case of *Central Transp. Co. vs. Pullman's Palace Car Co.* 139 U. S. 24, where it was held that, since the act of Congress of June 1, 1872 (17 Stat. at L. 197), re-enacted in Sec. 914 of the Revised Statutes, courts of the United States are required to conform as near as may be in questions of 'practice, pleadings, and forms and modes of proceeding,' to those existing in the courts of the state within which the trial is had, and a judgment of the circuit court of the United States for the eastern district of Pennsylvania, ordering a peremptory non-suit, in pursuance of a state statute, was upheld. It is the clear implication of this case that granting a non-suit for want of sufficient evidence is not an infringe-

ment of the constitutional right of trial by jury.

"As there was a statute of the territory of Utah authorizing courts to enter judgments of peremptory non-suit, there was no error in the trial court in granting the motion for non-suit in the present case, nor in the judgment of the Supreme Court affirming such ruling; if, indeed, upon the entire evidence adduced by the plaintiffs enough did not appear to sustain a verdict."

See, also, *Peoples Bank vs. Aetna Ins. Co.* (C. C. A. 4 Cir.), 74 Fed. 512.

Second Assignment of Error.

This relates to the holding of the Court that plaintiff had failed to show that the injuries received by him were the result of the negligence of defendant in error.

Sec. 2837, Rev. Codes of Idaho, enacted Laws of 1903, p. 343, reads as follows:

"Any person, company, or corporation, incorporated or that may hereafter be incorporated under the laws of this State or of any State or Territory of the United States, and doing business in this State, for the purpose of supplying, transmitting, delivering, or furnishing electric power or electric energy by wires, cables, or any other method or means, shall have and is hereby given the right to erect, construct, maintain, and operate all necessary lines upon, along and over any and all public roads, streets and highways, except within the limits of incorporated cities and towns and across the right of way of any railroad or railroad corporation, together with poles, piers, arms, cross-arms, wires, supports, structures and fixtures, for the purposes aforesaid, or either of them, in such manner and at such places as not to incommode the public use of the road, highway, street, or railroad, or to interrupt the navigation of water, together with the right to erect, construct, maintain and operate upon said electric power line a telephone line to be

used only in connection with the said electric energy and power line: *Provided*, That the corporation, company or person exercising the right of way herein and hereby granted, shall first apply to the board of county commissioners for permission to construct in the manner provided by law, and to acquire a right of way, and shall give to the county into or through which the right of way herein and hereby granted is exercised, a bond, with surety to be approved by the board of county commissioners, in the sum of five thousand dollars, conditioned to hold the said county harmless from any and all liability on account of the erection, construction, maintenance, or operation of the said electric line or lines: *Provided, further*, That nothing in this section shall be construed to mean the right to occupy public roads for any railroad or car line of any kind."

That defendant was duly authorized, in accordance with said statute to, and had a legal right to, construct its electric line where it did construct it along said road, is not questioned, and complaint is made solely upon the grounds that at the point upon said road at which the accident occurred, defendant's wires were suspended at a height of but twenty-seven (27) feet and so close to the center or traveled portion of the road as to render the road dangerous to persons traveling along it, and that said wires were not protected by safe and sufficient insulating material (tr. p. 3).

Section 928, Rev. Codes of Idaho (formerly Section 932, Rev. Statutes, and in force since 1887), reads as follows:

"All highways, except alleys and bridges, must be at least fifty feet wide except those now existing of a less width."

Plaintiff testified that he took up his residence on his ranch near the scene of the accident, in April, 1906, (tr.

p. 47) ; that "the defendant company's line of poles is just outside my fence, practically against my fence; at the time I went on my land, I don't know whether this road was accepted by the county but the road was established when I went there. This road is supposed to be 50 feet from fence to fence. The north side of the road at a point where you made a turn to go onto the bridge goes right up against my fence. The main traveled part of the road is graded right to the fence" (tr. p. 48).

It is apparent from the foregoing that the electric line was built along the north side of the road and twenty-five feet from what the law required, and plaintiff stated, should be the center of it, and that the poles were erected as far from the road as they could be without being placed within plaintiff's enclosure.

The poles of defendant in error, on which the electric wires were strung, were about 200 feet apart (tr. p. 20.) By actual measurement, the height of the bottom wire on five of said poles, above the ground varied from twenty-nine and one-half ($29\frac{1}{2}$) to thirty-one (31) feet (tr. p. 20; recross-ex. p. 21). At the point of contact, marked "X" on plaintiff's exhibit "B", and between the poles marked B and B, the bottom wire was twenty-seven and one-half ($27\frac{1}{2}$) feet above the ground, not considering the slack, which would make the lowest point on the wire about

S. 23 How. 172 (16: 424).

twenty-seven feet three inches from the ground at a guess (tr. pp. 20 and 26).

We apprehend that this Court will take judicial cognizance of the fact that wire contracts with the cold and expands with the heat, hence there is always a sag in

wires between poles, as, if they were stretched taut, they would break in cold weather.

The electric wires of defendant were not insulated.

H. H. Freedhein, an electrical engineer, was called by plaintiff as an expert witness. He testified, on direct examination, that "the standard recognized by engineers and parties in charge of construction of power lines such as this is and in a country such as this is, as to the height of the poles that should be used along these highways, is *from thirty-five (35) to fifty (50) feet, according to authorities I have seen, and this I know outside of the authorities. It is the practice to use poles about forty feet in length for high tension transmission lines.* In the construction of these power lines poles of different lengths are used, depending on the contour of the country. A country that is traversed *sometimes* goes up and down, small variations, and it is the object of using different lengths to keep the top of the wire on a grade, to keep it level as much as possible" (tr. p. 36).

He did not state that some of the poles on this line should have been thirty-five (35) feet, some forty (40) feet and some fifty (50) feet, but, on the contrary, he testified on cross-examination, that "if a pole is seven (7) inches in diameter at the top and forty (40) feet long, it is a suitable pole for all voltages across a country such as the one here in question. It is practically a level country. All the variations in the surface are small undulations that come in a comparatively level country" (tr. p. 37).

He stated, on direct examination, that it is the practice to use poles about forty feet in length for high tension transmission lines (tr. p. 36), and on cross-examination, that a forty-foot pole would be practically standard for

high tension wire construction; that such a pole should be put in the ground between six and eight feet, probably six feet if the earth was solid, and, after testifying to the topography of the country traversed by defendant's line, that he considered a forty foot pole standard and that he would put it about eight feet in the ground (tr. pp. 37 and 38).

On direct examination, Freedhein did not testify to the manner in which the wires and insulators were placed on the poles of defendant in error, but, on cross-examination, he stated that there were "three wires strung on these poles, one on top and two at the sides of the arms, and these are on the cross-arm. *It is the general, usual and standard form of construction so far as the wires are concerned.* It is a three phase current. They usually put one wire on top with an insulator on top of the pole, then the cross-arm lower down and an insulator on the top of the cross-arm and the wires are attached to the insulators. The wires were attached to the insulators, the usual insulators in the ordinary way upon these poles. I don't believe that these are the usual insulators that are accustomed to be used on good construction. *I did not go up to look at them.* If what I have heard of the voltage being 22,000, I certainly would object to them. I don't know about the voltage on this particular line. Wires range from forty-two to seventy-two inches apart in my experience if for high voltage. The lower wires on high voltage of from 22,000 to 23,000 would be put about eighty inches to forty, or sixty, or seventy-two inches apart, and in good construction, the wire on the top is about the distance from these other wires as they are apart. *I did not go up to measure or see how these wires were located in that regard.* * * *

On a forty-foot pole the first cross-arm *might* be ten to eighteen inches below the top of the pole. If I was going to have a high-tension wire strung to carry a voltage of 22,600 or 23,000 volts and wanted to put the wires a safe distance apart, I would put the cross-arm thirty to forty inches below the wire on a proper insulator on the top of the pole. Out on the end of the cross-arm, I would put a pin and an insulator and for that voltage the top of the insulator would be in the neighborhood of twelve to fourteen inches above the cross-arm. Opinions might differ on this subject. I think for a voltage of 22,000 or 23,000 volts a cross-arm six to eight feet would be long enough and fairly standard and the top wire ought to be the same distance away from the other two that they are from each other. I think that would be enough for 22,000 volts, but I don't know about having examined the books to see whether any electrical authority ever concluded that that was sufficient. The hypotenuse formed by the wire from the top to the further end of that arm would be great enough separation. I would put the cross-arm down from twenty to forty inches. If I wanted to be safe, I would put it thirty inches" (tr. pp. 38, 39 and 40).

If the testimony of Freedhein proves or even tends to prove anything, it is that defendant's electric line was constructed in accordance with the standards fixed by electrical engineers. He stated that a forty foot pole is standard and should be placed in the ground eight feet where the earth is not rock solid. As the point at which this accident occurred is in a practically level country, according to Freedhein, and but a few feet from the farm of plaintiff, the presumption would be that the earth would not be rock but soil, hence the pole should be eight feet in

the ground. According to the testimony of plaintiff's witness, Elmer Bird, the average height of the lowest wire on five poles was about 30 feet, hence it would appear that the length of the pole from the end in the ground to the lowest wire would be about thirty-eight (38) feet. Freedhein stated that, in standard construction, there should be the same distance between the wire on top of the pole and the wires on the cross-arm, as there is between the wires on either end of the cross-arm. He fixed that distance for high voltage, at from 42 to 72 inches, at from 40 to 60, to 72 or 80 inches, (tr. p. 38), at 6 to 8 feet as "fairly standard," at 20 to 40 inches, and "if I wanted to be safe, I would put it 30 inches" (tr. pp. 38 and 40). If the lowest wire on the pole was about 38 feet from the end of the pole, and the upper wire should be 42 inches higher, the pole would be about 41 feet long; if the highest wire was 72 inches above the lowest, the pole would be about 43 feet long; if the distance between the highest and lowest wire was eight (8) feet, the pole would be about 45 feet long; and if the distance was thirty (30) inches, the length of the pole would be about 40 feet. The Court will bear in mind the fact that Freedhein did not know how far the wires were apart on defendant's poles (tr. p. 38).

Electrical Companies Not Insurers.

In *Shawnee Light & Power Co. v. Sears* (Okl.), 95 Pac. at p. 453, it is said:

"That defendant is not an insurer, and that instructions, No. 1 offered by it, correctly states the law, is the holding of practically all the authorities upon this point. 20 Cyc. p. 471; *New Omaha Light Co. vs. Anderson*, 73 Neb. 84, 102 N. W. 89; *Knowlton vs. Des Moines Edison Light Co.* 117 Iowa, 451, 90 N. W. 818;

Norfolk Ry. & Light Co. v. Spratley, 103 Va. 379, 49 S. E. 502; Citizens Ry. Co. v. Gifford, 19 Tex. Civ. App. 631, 47 S. W. 1041; City of Denver v. Sherret, 88 Fed. 226, 31 C. C. A. 499."

See also Denver Consol. Co. vs. Walters (Col.), 89 Pac. at page 819.

City of Denver v. Sherret (C. C. A.), 88 Fed. at p. 233.

Duty of Electrical Companies.

"A company maintaining electrical wires, over which a high voltage of electricity is conveyed, rendering them highly dangerous to others, is under the duty of using the necessary care and prudence *at places where others have a right to go* either for work, business or pleasure, to prevent injury."

Joyce on Electric Law, Sec. 445.

Croswell on Electricity, Sec. 234.

Elliott on Roads and Streets, Sec. 1071.

In the case of Thomas' Administrator v. Maysville Gas Co. (Ky.), 53 L. R. A. at p. 148, the Court said:

"That there was a duty imposed by law upon the Street Railway Company to keep its wires properly insulated so that those whose business or pleasure brought them in dangerous proximity to them might be protected from the deadly current which they conducted, cannot be questioned."

In the case of Thomas, by Next Friend v. City of Somerset (Ky.), 7 L. R. A. (N. S.) at p. 964, the Court said that:

"It was held by this Court in McLaughlin v. Electric Light Co. 100 Ky. 173, 34 L. R. A. 812, 38 S. W. 851, to be the duty of Electric Lighting Companies, or persons operating such plants, at points where people have the right to go for work or business, or pleasure,

to have the insulation or protection perfect; and for failure in this respect, they must respond in damages. This doctrine was followed in *Schweitzer v. Citizens General Electric Co.* 21 Ky. L. Rep. 608, 52 S. W. 830; *Overall v. Louisville Electric Light Co.* 20 Ky. L. Rep. 759, 47 S. W. 442; *Owensboro v. York*, 117, Ky. 294, 77 S. W. 1136; *Lexington Ry. Co. v. Fain*, 24 Ky. L. Rep. 1143, 71 S. W. 628."

See also *Ryan vs. St. Louis Transit Co. (Mo.)*, 2 L. R. A. (N. S.), at p. 781.

Electrical companies are required to insulate wires at points where it may be *reasonably* anticipated that people may come in contact with them.

In *Graves v. Washington W. P. Co.* 87 Pac. at p. 958, the Supreme Court of Washington said, among other things:

"Respondent meets these contentions of appellant by the assertion of several propositions which we will consider seriatim. He urges first: 'The law imposes on persons manufacturing and dealing in or handling highly dangerous elements and substances such as electricity and dynamite, the duty of exercising the highest degree of care to protect persons from danger in all places where the general public may rightfully go for purposes of business or pleasure.' Accepting this as a correct statement of the law, let us apply it to the facts of this case. Can we say that 'the general public may rightfully go for purposes of business or pleasure', up or down the side of a high and almost perpendicular pier of a public bridge across a river, climbing upon the diagonally attached slats of steel as did respondent? Was it ever contemplated that such a use should be made of the piers of this bridge by the general public? We apprehend not. The bridge was constructed for the purpose of furnishing the public a means of crossing a goodly sized river. It was intended that the public should walk or ride upon the roadway at the top of said bridge. The lattice work upon the sides of these piers was not intended to con-

stitute ladders or furnish means of access to or from the top of the bridge. The public was not invited, nor expected to use such lattice work for such a purpose.
* * *

"People who have occasion to use wires highly charged with electricity must be held to a high degree of care and when they place those wires in close proximity to places or structures where other persons may rightfully go for business or pleasure, it is incumbent upon them to use a high degree of care to prevent any person from being injured by coming in contact therewith. * * *

"Ordinarily, a person whose duty it is to furnish protection to others against a dangerous agency, fully complies with the law when he provides such a protection as will safely guard against any contingency that is *reasonably* to be anticipated. He is not legally bound to safeguard against occurrences that cannot be reasonably expected or contemplated as likely to occur. *Decker v. Stimson Mill Co.* 31 Wash. 522; 72 Pac. 89; *Johnston v. Great Northern Ry. Co.* (Wash.) 84 Pac. 627; *Daffron v. Majestic Laundry* (Wash.) 82 Pac. 1090. * * *

"The carrying of dangerous electric wires upon high poles or the burying of them in trenches readily occurs to one as an appropriate requisite for the safety of people who may have occasion to come into the vicinity of said wires. But if a boy, through curiosity, should dig up a wire buried in the ground, or should climb to the top of a high pole, and in either case take hold of a live wire and be injured, would it be seriously contended that this was a circumstance which the owner of the wire should be held to have anticipated and guarded against? To be sure, it would be a *possible* contingency; but would it be so probable that any reasonably prudent person would feel it necessary to be guarded against? * * *

"As a matter of law, it may be said that a person of ordinary care and prudence, in the operation of an agency so dangerous as electricity, would and should be exceedingly careful and so arrange the means of handling and transmitting this powerful and mysterious element as to protect from harm any person or persons whom he might *reasonably* expect to be in a position to receive harm therefrom. But to say that

the owner or operator of an electric plant should foresee and anticipate the presence of children or others in places where the ordinarily prudent, careful and foreseeing person would not expect, or deem it likely for them to be, would impose a burden and responsibility for which there is not justification in law."

In *Gentzkow v. Portland Ry. Co. (Ore.)*, 102 Pac. at p. 616, it is said:

"The defendant, employing in its business an agency so deadly and dangerous as electricity, is held to exercise the utmost degree of care in the construction, maintenance, inspection and repair of its wires so as to keep them harmless at places where persons are *liable* to come in contact with them. *Perham v. Portland Electric Co.* 33 Ore. 451, 53 Pac. 14, 24; 40 L. R. A. 799, 72 Am. St. Rep. 730."

In the case of *Winegarner v. Edison Light & Power Co. (Kan.)*, 109 Pac. at p. 779, the Court quoted with approval from the instructions given to the jury by the lower court as follows:

"You are further instructed that if under all the facts and circumstances in this case, you find that the defendant knew, or had sufficient and reasonable grounds to anticipate that persons might, while in the exercise of ordinary care for their own safety, come in contact with and be injured by any defective and dangerous wires it might operate and maintain at said place. * * * The company, however, which uses such a dangerous agent is bound not only to know the extent of the danger, but to use the very highest degree of care practicable to avoid injury to every one who may be lawfully in proximity to its wires and *liable* to come accidentally or otherwise in contact with them."

In *Foley v. Northern California Power Co. (Cal. Court of App.)*, at p. 469, occurs the following:

"The owner or operator of an electric plant is

bound to exercise reasonable care in maintaining a system of inspection by which any change in the physical condition of any part of the plant, which would tend to increase the danger to persons lawfully in the pursuit of their business or pleasure may be reasonably discovered. *Bourke v. Butte Electric and Power Co. et al.*, 33 Mont. 267; 83 Pac. 470. The care which the law exacts from any person, firm or corporation engaged in operating an instrumentality is always in proportion to the degree of danger *reasonably* to be apprehended from the means employed. *Carroll v. Grande Ronde Electric Co.* 47 Ore. 424, 84 Pac. 391, 6 L. R. A. (N. S.), 290."

In the case of *Union Light, Heat & Power Co. v. Arnston* (C. C. A.), 157 Fed. at p. 542, Judge Adams used the following language:

"That the defendant should have fairly and reasonably anticipated that the basement which it had equipped with wires and lamps for lighting purposes would be occupied and used as it was and that Stone's agents, servants, and employes might from time to time be there is not debatable, and that defendant owed a duty to exercise a proper degree of care for their safety, is beyond question. If authority were necessary to sustain so plain a proposition, reference might be made to 1 Thompson on Negligence, Sec. 801, et seq., and to the cases there cited."

In *Colusa-Parrot Mining and Smelting Co. v. Monahan* (C. C. A. 9th Cir.), 162 Fed. at p. 279, the Court quotes with approval from the case of *Lexington Ry. Co. v. Fains*, Admr. (Ky.), 71 S. W. 629, as follows:

"The law applicable to this case has been well settled in Kentucky in several cases that have been brought to this Court for final adjudication. It is that those who manufacture or use electricity for private advantage must do so at their peril, and the only way to prevent accidents where a deadly current is used is

to have perfect protection at those points where people are likely to come in contact with it, citing *McLaughlin v. Light Co.* 100 Ky. 173, 37 S. W. 851; *Schweitzer's Adm'r. v. Electric Co. (Ky.)*, 52 S. W. 830; *Thomas' Adm'r. v. Gas Co.* 112 Ky. 569, 66 S. W. 398; *Macon v. Railway Co.* 110 Ky. 680, 62 S. W. 496."

Continuing, Mr. Justice Ross said:

"In the present case it appears, as has been said, the plaintiff was a common laborer, knowing nothing of electrical work, and unfamiliar with the perils attending it. In sending him upon the roof to work the defendant was *bound* to know that he might come in contact with its wire. *Newark Electric Light & Power Co. v. Garden*, 78 Fed. 72, 23 C. C. A. 649, 37 L. R. A. 729. And it was bound by the plainest principles of law and justice to properly insulate its wire, to the end that those *likely* to come in contact with it should not be injured. Authorities, *supra*. See, also, *Bourke v. Butte Electric Light & Power Co.* 33 Mont. 267, 83 Pac. 470; *Giffin v. United Electric Light Co.* 164 Mass. 492, 41 N. E. 675, 32 L. R. A. 400, 49 Am. St. Rep. 477; *Western Union Telegraph Co. v. McMullen*, 58 N. J. Law, 155, 33 Atl. 384, 32 L. R. A. 352."

In *Minnesota General Electric Co. v. Cronon* (C. C. A. 8th Cir.), 166 Fed. at page 661, is the following:

"In *Hector v. Boston Electric Light Co.* 161 Mass. 558, 37 N. E. 773, 25 L. R. A. 554, a lineman employed by a telephone company, for the purpose of affixing wires of the company to a standard erected on the roof of a building by the electric lighting company, had an implied license to reach the roof by going up through the building. But he used a different way, and, while unnecessarily upon the roof of an adjoining building, was injured by coming in contact with an uninsulated wire charged with electricity belonging to the electric lighting company. It was held that he was not entitled to recover. Field, C. J., observed

that: "Whatever duty the defendant owed to the plaintiff as the servant of the telegraph and telephone company, under its license to that company to use the standard for the support of telegraph or telephone wires, this duty cannot be held to extend over the whole circuit of the defendant's wires, and the defendant was not required, for the protection of the servants of the telegraph and telephone company, to maintain an effectual insulation of its wires over other buildings than that on which the standard was placed, at places where the defendant had no reason to expect that the servants of that company would go in the performance of their duties in using its standard, and where the defendant had neither invited nor licensed them to go * * *."

"In *Keefe vs. Narragansett Electric Lighting Co.* 21 R. I. 575, 43 Atl. 542, the testimony showed that the plaintiff, a girl about eleven years of age, climbed out of the window of a house in which she lived onto the jet of the adjoining house. While so walking she came in contact with electric wires owned by the tenant of that building which were connected with defendant's wires for transmitting electricity in the houses. The Court said:

"We do not think that the action can be maintained: first, because the wires by which the plaintiff was injured were not the wires of the defendant; and, secondly, even if they had been, we fail to see that the defendant would have owed any duty to the plaintiff since it could have had no reason to *anticipate* the act of the plaintiff in walking along the jet."

In the case of *Brush Electric Light & Power Company v. Lefevre* (Tex. S. Ct.), 49 L. R. A., at page 773, is the following:

"There can be no liability for the injury in this case unless, from all the circumstances, the electric light company could reasonably expect that some person might be injured by its failure to cover the wires

placed by it upon the awning where the deceased received his injury. *Texas & P. R. Co. v. Bigham*, 90 Tex. 225, 38 S. W. 162. In the case cited, Chief Justice Gaines, on behalf of the court, expressed the rule in the following language: quoting from the Supreme Court of the United States in the case of *Milwaukee & St. P. R. Co. v. Kellogg*, 94 U. S. 469, 24 L. Ed. 256:

“ ‘But it is generally held that in order to warrant a finding that negligence, or an act not amounting to wanton wrong, is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances.’ This is probably as accurate a statement of the doctrine as can be given, and is substantially that generally laid down by the authorities. Applying this rule to the facts of this case, the inquiry arises: Would an ordinarily prudent man, looking at the surroundings as they then appeared, have reasonably expected that any person would be upon the awning, and might be injured by coming in contact with the exposed wires? If such a consequence might have been reasonably foreseen, then the plaintiff in error would be liable for the injury, under the facts of this case, unless there be some other defense. If not, then it can not be held liable for the death of Paul Lefevre. If the testimony is such that a jury might have found that the electric light company ought to have anticipated the injury, then this Court can not inquire into the correctness of such a conclusion, although it might differ with the jury as to the correctness of the verdict. In the facts of this case there is not a scintilla of proof that the awning had been used by any person as a place of resort, either for pleasure or for business. Looking at the photographic views of the situation, the awning appears to be such as is common in the towns and cities as a protection to the front of the building, with no railing or other protection upon the top or roof showing the intention for persons to resort there for any purpose whatever. If a man of ordinary prudence had been placing the wires at the same points, the facts would not have notified him

that probably someone would be injured by them. From the street and the sidewalk to the place where the exposed wires were located is a distance of about 16 feet, which must have been at least 10 feet above the heads of men of ordinary height passing along the street, and there were no means by which passers upon the street or sidewalk could come in contact with the wire. It was therefore not negligence, with regard to persons traveling along the street or sidewalk, to leave the wire exposed, because there was no reasonable, and scarcely a possible chance for such persons to be injured thereby. We are of opinion that there is no evidence upon which a jury could base a verdict in favor of the defendants in error, and the trial court erred in refusing to give the requested instruction to find for defendant'."

The Court will bear in mind the following facts: That this accident occurred a half mile from the town of Buhl on a country road traversing a new irrigation project known as the Twin Falls Carey Act Project, and that water was turned onto the lands in that vicinity for the first time in 1906; that before that time the land was covered with sagebrush (tr. pp. 42 and 30); that a little wheat was raised that year; that in 1907 the settlers raised a little grain and started on alfalfa, and in 1908 alfalfa and grain were raised (tr. pp. 42 and 43); that defendant's electric line was constructed in 1908; that there are no other hay-stackers in that vicinity of the dimensions of the one used by plaintiff (tr. pp. 28, 41 and 42); that it was made the size it was by plaintiff and Van Hoy in 1910 (tr. p. 47); and that no other person had been injured by coming in contact with the wires of defendant along that road either before or since plaintiff was hurt (tr. pp. 34 and 44).

We contend that plaintiff, in dragging that hay-stacker

along the road, was not required to have the long end of the boom (which came into contact with the wire (tr. pp. 27 and 30), in dangerous proximity to the wire, as it worked on a hinge and could be let down (tr. p. 50), and that under the foregoing facts and authorities the defendant could not reasonably anticipate that any person would travel along that road with any kind of a contrivance on which there would be a pole 27 feet and over in height and a horizontal pole about 40 feet in length, which latter would come in contact with its wires, hence, defendant was not required to insulate its wires.

We are not familiar with any rule of law that requires an electric company to insulate its wires to guard against injuries that might be sustained by the occupants of balloons and airships, and we do not know of any rule requiring such companies to insulate wires strung along outside of a country road at a height of over 27 feet.

No vehicle or means used in the ordinary modes of travel, of which we have any knowledge, could come in close proximity with defendant's wires. Loaded wagons, buggies, traction engines, automobiles, thrashing machines, bicycles, motorcycles, loaded hay wagons, etc., could pass in absolute safety.

Under the statutes of Idaho, electric wires strung across railroad tracks need be at a height of but 25 feet.

Rev. Codes, Sec. 1928.

We respectfully insist that the evidence wholly fails to show that defendant's electric line was not properly constructed in accordance with the standard fixed by electrical engineers, or that the injuries suffered by plaintiff were the result of any negligence on the part of defendant.

Third Assignment of Error.

This assignment of error relates to the holding of the lower court that plaintiff was chargeable with contributory negligence precluding his recovery.

Granting for the sake of argument that the defendant was negligent in not having its wires insulated, the question arises, was such negligence the proximate cause of the injuries suffered by plaintiff?

It is not contended that defendant wantonly or maliciously injured plaintiff.

The rule is so well settled as not to require the citation of authorities, that to constitute proximate cause creating liability for negligence, the injury must have been the natural and probable consequence of the negligent act, and one which in the light of attending circumstances, an ordinarily prudent man ought reasonably to have foreseen might probably occur as the result of his negligence.

We earnestly contend, as above stated, that no ordinarily prudent man could reasonably foresee that any person would haul along a country road any kind of a vehicle or structure having an upright pole 27 feet 6 inches in length, and a horizontal pole about 40 feet long, which latter would extend far beyond the northerly boundary of the road and come into contact with an electric wire 27 feet and over above the ground.

That proposition appears to us to be too plain to admit of argument, and if we are correct in our view of the matter, the fact that the wire was not insulated was not the proximate cause of the injury, but the accident was directly attributable to plaintiff's negligent conduct, which

was the proximate cause of the injuries suffered by him, hence, his action could not be maintained.

Contributory Negligence.

It appears from the evidence that it was the long end of the boom that came in contact with the electric wire (Tr. pp. 27 and 30). When the turn was made to go up to the bridge the long end of the boom swung out over plaintiff's fence and under the electric light wires (Tr. p. 54). Defendant's Exhibit No. 2 shows that after the turn was made every foot the hay-stacker was dragged towards the bridge took the upright pole or mast further away from the defendant's wires.

As the mast did not come in contact with the electric wires it is unnecessary to consider any of the evidence concerning the taking of the stacker under the wires at a different point, when the boom was following the same direction as the mast, except to say that at no point did it touch the wires, and that it was taken under them but a few feet from a pole (Tr. pp. 53 and 54), where, as a matter of course, the wire was higher than at other points between poles because of the sag.

Plaintiff had resided on his ranch at the scene of the accident since 1906. He was there at the time the electric line was constructed, and the poles of defendant were practically against his fence. He saw the power line frequently as he was compelled to go under it in order to get into his place. He knew the wires were there, knew that they were charged with electricity, and that they were dangerous. He knew that the town of Buhl was lighted by electricity carried over those wires (Tr. pp. 46

and 48). He and Van Hoy remodeled the stacker in 1910 (Tr. p. 47) without having made any measurements for the purpose of ascertaining the height of the electric wires from the ground at any point along the line (tr. p. 48). The long end of the boom on the stacker works up and down in stacking operations by means of a rope on the butt end. The boom works on a hinge to accommodate itself to the different heights of the hay stacks, and across the top of it was a wire cable about a half inch thick. The boom was about 38 or 40 feet long. Twelve or 13 feet was on one side of the mast and the remainder on the other side. On the day of the accident plaintiff and his hired man hitched four horses on to the hay-stacker and dragged it up the road westerly toward the bridge. Plaintiff testified that "We pulled up to the bridge and I was driving the inside team next to the wire fence and was right up against the wire (Tr. p. 45). You have to hug the line to get on the bridge and you have to drive as close as you possibly can and the derrick just fits on the bridge nicely when you get it there. *We had to be very particular.* When you pull up to the bridge you have got to be particular not to get off to the south of the bridge. On the south end of the bridge it probably lacked 5 or 6 inches of being to the bridge, that is it did not get up to the bridge yet. It had not squared around. We were going to square the south end of the bridge and then we were going to drive my team on the bridge and square it and take it across. My team was over on the north side, but I stood on the south side. I did not have hold of the lines. The team I was driving was on the opposite side from where I was standing. I had gone over to the south side. I was traveling west and came up to this point and found

myself near the fence. I let loose of the lines and went over to the south side. The other man was standing on the bridge in front of the derrick. He had hold of his team by the heads. He was not guiding my team. My team would have to be quieted. * * * There were four horses abreast. I was driving one team and he the other. * * * At the time of the accident I was standing off to the side of the derrick. * * * I was facing north when I received the shock. Just before that I asked my man if he was all ready to pull, if everything was all right, and he said it was and at that I turned my head away from him, looked up and threw my hand up like that" (Tr. pp. 51 and 52). Plaintiff in error took hold of a manila rope, and the wire cable struck him on the arm. As he grabbed the rope there was a flash and the cable struck him, blinding him and rendering him speechless (Tr. p. 52). He could feel the electricity passing through him and could hear it popping. Moran released him from the cable and the horses ran away, the derrick knocking both plaintiff and Moran down and they were dragged by it to the north side of the bridge, where it tilted and released them (Tr. pp. 45 and 46). The boom was extending back when plaintiff swung the stacker around to cross the bridge, and when the turn was made the long end of the boom swung out under the electric wires. "I was not watching the boom as I went along the fence there. I was watching my team and couldn't very well watch my team and the boom too" (Tr. p. 54).

From plaintiff's testimony, which was uncontradicted, it plainly appears that the injuries suffered by him were the result of his own recklessness and utter disregard for his own safety. He left his team, which he stated would

have to be quieted, dropped the lines and went over to the south side of the derrick, the base of which was 14 feet square, paid no attention to the boom although he knew it was under the electric wires, which he knew were dangerous, and took hold of a rope attached to the butt end of the boom although he was aware of the fact that the long end was moved up and down by the butt end. Whether his unattended team or the hired man's team started and the sudden jerk caused the long end of the boom to come in contact with defendant's wires, or whether he voluntarily pulled the rope he took hold of on the butt end of the boom and thus caused the long end to touch the wires, or whether one of the teams started and caused him to involuntarily pull on the said rope and bring about the contact, cuts no figure. As the hay-stacker had remained stationary for some time, at least while he was moving from the north side of it to the south side, and questioning his man, without the boom touching the wires, it is a certainty that no contact would have occurred had not something happened to cause the boom to fly up. Had plaintiff lowered the boom on its hinge down alongside of the mast, or watched it while it was under the wire and kept it from coming near the wire by manipulating the butt end, as it was his duty to do, under the circumstances, the accident would not have happened. There was not only a want of ordinary care on the part of the plaintiff, but his lack of care was reckless in the extreme, and was the proximate cause of his injuries.

In *Railroad v. Jones*, 95 U. S. at page 442, it is said:

“One who by his negligence has brought an injury

upon himself cannot recover damages for it. Such is the rule of the civil and of the common law. A plaintiff in such cases is entitled to no relief. But where the defendant has been guilty of negligence also, in the same connection, the result depends upon the facts. The question in such case is: 1. Whether the damage was occasioned entirely by the negligence or improper conduct of the defendant; or, 2. Whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary care and caution, that but for such negligence or want of care and caution on his part the misfortune would not have happened. In the former case, the plaintiff is entitled to recover. In the latter, he is not. *Tuff v. Warman*, 5 C. B. N. S. 573; *Butterfield v. Forrester*, 11 East, 58; *Bridge v. Grand Junction R. Co.*, 3 M. & W. 244; *Davis v. Mann*, 10 Id. 546; *Clayards v. De-thick*, 12 Q. B. 439; *Van Lien v. Scoville Manufacturing Co.*, 14 Abb. (N. Y.) Pr. N. S. 74; *Ince v. East Boston Ferry*, 106 Mass. 149. * * * The liability of the company was conditioned upon the exercise of reasonable and proper care and caution on his part. Without the latter, the former could not arise. He and another who rode beside him were the only persons hurt upon the train. All those in the box car, where he should have been, were uninjured. He would have escaped also if he had been there. His injury was due to his own recklessness and folly. He was himself the author of his misfortune. This is shown with as near an approach to a demonstration as anything short of mathematics will permit. The case is thus clearly brought within the second of the predicates of mutual negligence we have laid down. *Hickey v. Boston & Lowell R. Co.* 14 Allen (Mass.), 429; *Todd vs. Old Colony R. Co.* 3 id. 18; s. c. 7 id. 207; *Gavett v. M. & L. R. Co.* 16 Gray (Mass.), 501; *Lucas v. N. B. & T. R. Co.* 6 id. 64; *Ward vs. Railroad Co.* 2 Abb. (N. Y.), Pr. U. S. 411; *Galina & Chicago Union R. Co. v. Yarwood*, 15 Ill. 468; *Dogget v. Illinois Central R. Co.* 34 Iowa, 284. The plaintiff was not entitled to recover. It follows that the court erred in refusing the instruction asked upon this subject. If the company had prayed the court to direct the jury

to return a verdict for the defendant, it would have been the duty of the court to give such direction, and error to refuse. *Gavett v. M. & L. R. Co.*, *supra*; *Merchants' Bank v. State Bank*, 10 Wall. 604; *Pleasants vs. Fant*, 22 *id.* 121."

In *Oregon Co. v. Roe* (C. C. A. Ninth Cir.), 176 Fed. at page 718, it is said:

"Error is also assigned upon the refusal of the court to give the following instruction: 'Before the plaintiff in this action can recover, you must be satisfied that such injury as she may have received was received by her without any fault or negligence on her part; the rule of court in this state being that any negligence on the part of the plaintiff, however slight, directly contributing to the injury, is sufficient to bar the plaintiff's right of recovery.' The court gave the instruction as requested, but struck out the words 'However slight.' We find no error in the action of the court. * * * and that the charge to the jury guided them correctly as to the principles of law pertinent to the issues."

In *Little v. Hackett*, 116 U. S. 366, 6 Sup. Ct. at page 393, Justice Field used the following language:

"That one cannot recover damages for an injury to the commission of which he had directly contributed, is a rule of established law and a principle of common justice. And it matters not whether that contribution consists in his participation in the direct cause of the injury, or in his omission of duties which, if performed, would have prevented it. If his fault, whether omission or commission, has been the proximate cause of the injury, he is without remedy against one also in the wrong."

In *Chicago, R. I. & P. Ry. Co. v. Baldwin* (C. C. A.), 164 Fed. at page 829, the Court said:

"In *Missouri Pacific Ry. Co. v. Moseley*, 57 Fed. 921, 925, 6 C. C. A. 641, 645, the plaintiff was overtaken and injured by an engine which came up be-

hind him while he was walking upon one railroad track and the roar of a train upon an adjoining track had rendered his hearing useless, and we held that this fact made the frequent and diligent use of his eyes to see what was coming behind him more imperative, and that as his view of the engine approaching behind him had been unobstructed, he was conclusively guilty of contributory negligence and could not recover. Under the common law one whose negligence directly contributed to his injury cannot recover damages of another whose negligence concurred to cause it. The negligence of the latter is no excuse for the contributory negligence of the former. *Railroad Co. v. Houston*, 95 U. S. 697, 702, 24 L. Ed. 542; *Schofield vs. Railroad Co.* 114 U. S. 615, 5 Sup. Ct. 1125, 29 L. Ed. 224; *Northern Pacific R. Co. v. Freeman*, 174 U. S. 379, 383, 19 Sup. Ct. 763, 43 L. Ed. 1014; *Blount v. Grand Trunk Ry. Co.*, 61 Fed. 375, 9 C. C. A. 526; *Pyle v. Clark*, 79 Fed. 744, 25 C. C. A. 190; *Chicago & N. W. Ry. Co. v. Andrews*, 130 Fed. 65, 73, 74. 64 C. C. A. 399, 407, 408; *Garlich v. Northern Pacific R. Co.* 131 Fed. 837, 840, 67 C. C. A. 237, 240."

See also:

Winters v. B. & O. R. Co. (C. C. A.), 117 Fed. at p. 49.

Western Union Tel. Co. v. Baker (C. C. A.), 140 Fed. at p. 318.

29 Cyc. pp. 505-6-7, and mass of authorities cited.

As from the undisputed testimony of plaintiff himself it is clear that he acted without ordinary or any care or caution, and that the accident was attributable solely to his own reckless conduct, and as no fair-minded man could draw any other conclusion from the testimony, it was the duty of the lower court to grant the motion for non-suit.

In *Chicago, Rock Island & P. Ry. Co. vs. Baldwin* (C. C. A.), 164 Fed. at page 829, occurs the following:

"Where a diligent use of the senses by the person injured would have avoided a known or apprehended danger, a failure to use them is, under ordinary circumstances, contributory negligence; and, where such a failure is established by undisputed or conclusive evidence, it is the duty of the trial court to instruct the jury that there can be no recovery of damages on account of the injury. *Railway Co. vs. Houston*, 95 U. S. 697, 702, 24 L. Ed. 542; *Schofield vs. Railroad Co.* 114 U. S. 615, 5 Sup. Ct. 1125, 29 L. Ed. 224; *Southern Pacific Co. vs. Pool*, 160 U. S. 438, 440, 16 Sup. Ct. 338, 40 L. Ed. 485; *Patton vs. Railroad Company*, 179 U. S. 658, 660, 21 Sup. Ct. 275, 45 L. Ed. 361; *Missouri Pac. Co. vs. Moseley*, 57 Fed. 921, 925, 6 C. C. A. 641, 645; *Chicago Great Western Ry. Co. vs. Roddy*, 131 Fed. 712, 713, 65 C. C. A. 470, 471; *Gilbert vs. Burlington & C. R. Ry. Co.* 128 Fed. 529, 532, 533, 63 C. C. A. 27, 30, 31; *Clark vs. Zarniko*, 106 Fed. 607, 608, 45 C. C. A. 494, 496, and *Chicago & N. W. Ry. Co. vs. Andrews*, 130 Fed. 65, 53, 74, 64 C. C. A. 399, 407, 408; *Western Union Tel. Co. vs. Baker*, 140 Fed. 315, 319, 72 C. C. A. 87, 91."

In *Cole vs. German Savings & Loan Society* (C. C. A.), 124 Fed. at page 121, it is stated:

"There is, however, always a preliminary question for the judge at the close of the evidence before a case can be submitted to the jury, and that question is, not whether or not there is any evidence, but whether or not there is any *substantial* evidence upon which a jury can properly render a verdict in favor of the party who produced it. *Brady vs. Chicago & G. W. Ry. Co.* 114 Fed. 160, 105, 52 C. C. A. 48, 52, 53, 57 L. R. A. 712; *Railway Co. vs. Belliwith*, 83 Fed. 437, 441, 28 C. C. A. 358, 362; *Association vs. Wilson*, 100 Fed. 368, 370, 40 C. C. A. 411, 413; *Commissioners vs. Clark*, 94 U. S. 278, 284, 24 L. Ed. 59; *North Pennsylvania R. Co. vs. Commercial Nat. Bank*, 123 U. S. 727, 733, 8 Sup. Ct. 266, 31 L. Ed. 287; *Railway*

Co. vs. Converse, 139 U. S. 469, 11 Sup. Ct. 569, 35 L. Ed. 213; Laclede vs. Fire Brick Mfg. Co. vs. Hartford Steam Boiler Inspection & Ins. Co. 60 Fed. 351, 354, 9 C. C. A. 1, 4; Gowen vs. Harley, 56 Fed. 973, 6 C. C. A. 190; Motey vs. Granite Co. 74 Fed. 155, 157, 20 C. C. A. 366, 368. The burden of proof is upon the plaintiff in an action for personal injury to establish the fact that the acts of negligence of which he complains were the proximate cause of the injury suffered, and if, at the close of the testimony in a trial for personal injury, there is no *substantial* evidence upon which a jury can properly find that the negligence charged was the proximate cause of the hurt sustained, it is the duty of the Court, as it is in a like condition of the evidence in the trial of every other issue of fact, to instruct the jury to return a verdict for the defendant. Railroad Co. vs. Elliott, 55 Fed. 949, 954, 5 C. C. A. 347, 352; Railroad Company vs. Reeves, 10 Wall. 176, 19 L. Ed. 909; Scheffer vs. Railroad Co. 105 U. S. 249, 252, 26 L. Ed. 1070; Jenks vs. Inhabitants of Wilbraham, 11 Gray, 142; Durham vs. Musselman, 2 Blackf. 96, 18 Am. Dec. 133; Morrison vs. Davis, 20 Pa. 171, 57 Am. Dec. 695; Denny vs. Railroad Co. 13 Gray, 481, 74 Am. Dec. 645; Dubuque Wood & Coal Assn. vs. County of Dubuque, 30 Iowa, 176; Hoag vs. Railroad Co. 85 Pa. 293, 298, 299, 27 Am. Rep. 653; West Mahanoy Tp. vs. Watson, 112 Pa. 574, 3 Atl. 866; Read vs. Nichols, 118 N. Y. 224, 23 N. E. 468, 7 L. R. A. 130; Railroad Co. vs. Mutch (Ala.) 11 So. 894, 21 L. R. A. 316, 38 Am. St. Rep. 179."

In Missouri Pacific Ry. Co. vs. Moseley (C. C. A.), 57 Fed. at page 922, the Court said:

"Where contributory negligence is established by the uncontroverted facts of the case, it is the duty of the trial court to instruct the jury that the plaintiff can not recover. Railroad Co. vs. Houston, 95 U. S. 697; Donaldson vs. Railroad Co. 21 Minn. 293; Brown vs. Railroad Co. 22 Minn. 165; Smith vs. Railroad Co. 26 Minn. 419, 4 N. W. 782; Lenix vs. Railway Co. 76 Mo. 86; Railway Co. vs. Dick (Ky.) 15

S. W. 665, 666; Schofield vs. Railway Co. 114 U. S. 615, 5 Sup. Ct. Rep. 1125; Aerkfetz vs. Humphreys, 145 U. S. 418, 420, 12 Sup. Ct. Rep. 835; Powell vs. Railway Co. 76 Mo. 80; Yancey vs. Railway Co. 93 Mo. 433, 438, 6 S. W. 272; Kellogg vs. Railroad Co. 75 Mo. 138; Bell vs. Railroad Co. 72 Mo. 50; Turner vs. Railroad Co. 74 Mo. 662; Dlanhi vs. Railway Co. 105 Mo. 645, 654, 658, 16 S. W. 281."

In *Goodlander Mill Co. v. Standard Oil Co.* (C. C. A.), 63 Fed. at page 401, Judge Jenkins used the following language:

"Without doubt, whether a given act or omission is the proximate cause of an injury is ordinarily a question for a jury. *Railway Co. v. Kellogg*, 94 U. S. 469. This, however, is subject to the well-settled rule that the court should withdraw a case from the jury, and direct a verdict, when the undisputed evidence is so conclusive that the court should set aside a verdict in opposition thereto. *North Pennsylvania R. Co. v. Commercial Nat. Bank*, 123 U. S. 727, 733, 8 Sup. Ct. 266; *Railroad Co. v. Converse*, 139 U. S. 469, 472, 11 Sup. Ct. 569; *Elliott v. Ry. Co.*, 150 U. S. 245, 14 Sup. Ct. 85; *Railway Co. v. McDonald*, 152 U. S. 262, 14 Sup. Ct. 619."

In *Western Union Tel. Co. v. Baker* (C. C. A.), 140 Fed. at page 319, Judge Sanborn used the following language:

"It is said that the question of the negligence of the plaintiff in this case was for the jury, and it is true that where there is a *serious conflict* of evidence, or where grave doubts arise what deductions of fact should be drawn from it, the question of contributory negligence, like other questions, is for the determination of the jury. But if, at the close of the trial, the evidence so clearly discloses the fact that the plaintiff was guilty of negligence which directly contributed to his injury, that a finding to the contrary could not be sustained, it is the duty of the trial court to

instruct the jury to return a verdict for the defendant. There is always a preliminary question for the judge before any case can be properly submitted to the jury, and it is, not whether or not there is any evidence, but whether or not there is any *substantial evidence*, upon which a jury may properly render a verdict in favor of one of the parties to the action. If there is no such evidence, it is the duty of the court to direct the jury to render a verdict against him. This duty is imposed upon the court in every case where the evidence and the rational deductions from it are undisputed, or of such a conclusive character that the exercise of a sound judicial discretion would compel a refusal to give effect to a contrary verdict. *Southern Pac. Co. v. Pool*, 160 U. S. 438, 440, 16 Sup. Ct. 338, 40 L. Ed. 485; *Patton v. Texas & Pac. R. Co.*, 179 U. S. 658, 660, 21 Sup. Ct. 275, 45 L. Ed. 361; *Chicago G. W. Ry. Co. v. Roddy*, 65 C. C. A. 470, 471, 131 Fed. 712, 713; *Gilbert v. Burlington C. R. & N. R. Co.*, 63 C. C. A. 27, 30, 31, 128 Fed. 529, 532; *Clark v. Zarniko*, 45 C. C. A. 494, 496, 106 Fed. 607, 608."

Concerning the duty of the trial court to take a case from a jury, Mr. Justice Brewer, in *Patton vs. Texas & Pacific Ry. Co.* 179 U. S. at page 660, uses the following language :

"At the same time the Judge is primarily responsible for the just outcome of the trial. He is not a mere moderator of a town meeting, submitting questions to a jury for determination, nor simply ruling on the admissibility of testimony, but one who in our jurisprudence stands charged with full responsibility. He has the same opportunity that jurors have for seeing the witnesses, for noting all those matters in a trial not capable of record, and when in his deliberate opinion there is no excuse for a verdict save in favor of one party, and he so rules by instructions to that effect, an appellate court will pay large respect to his judgment."

See also—

Swords vs. Page (C. C. A.), 174 Fed. at p. 919.

Use of Streets and Highways.

"The use of the streets for the purpose of moving a building along the surface thereof is not within the usual streets for purposes of ordinary travel. It is, however, an extraordinary and exceptional use in opposition to the primary uses of the streets."

Joyce, Electric Law, Sec. 481.

In said section, the case of *Dickson vs. Kewance, Etc.* Co. 53 Ill. App. 379, is cited, holding it proper to instruct the jury "that the company had a right to place its wires in the street, if allowed by corporate authority, if it did not interfere with the ordinary use of the public in the streets, and that removing a house along the streets was not within the rights enjoyable by the public as a use of the streets." And there is also cited *Northwestern Telephone Exchange Co. vs. Anderson* (N. D.), 98 N. W. 709, wherein it was said:

"The use of the streets for moving houses is not, however, a use but is rather an extraordinary one. It does not pertain to the primary right to the use of the streets for travel or other public purpose. The public derives no benefit therefrom generally. Such extraordinary use of the street may, however, be permitted as a use, under restrictions safeguarding the rights of the public to the street in certain cases, as necessity may require."

Moving houses along a public highway is not an ordinary use and is not within the right which is enjoyable by the public in such highway. *New York & New Jersey Telephone Co. vs. Dexheimer*, 14 N. J. Law J. 295; *Toledo B. G. & S. Traction Co. vs. Sterling*, 29 Ohio, C. C. 227.

In *Ft. Madison St. R. Co. v. Hughes* (Iowa), 14 L. R. A. (N. S.), at page 451, the Court said:

“But, where the use of the street has been lawfully appropriated in so far as essential for the operation thereof of an electric street railway company, one of the modern conveniences of travel and transportation, there is no tenable ground for demanding that its operation shall cease or be unduly interfered with, or that the value of its franchise shall be impaired, or its property destroyed, to enable another to make an unusual and extraordinary use of the street in the moving of houses or other structures over it. This would be inconsistent with the franchise granted to which the street has become subject. The rights of the defendants to the use of the street were limited by those of the company to operate its cars thereon and they could not insist upon the elimination of its franchise rights in order to give way to them over the road in moving the house. In other words, the defendants had the right to the use of the street as it was, with the trolley line in operation, and not as it would have been had no franchise been granted by the City of Ft. Madison; and, as they could not move the house lengthwise on the street as they intended without occupying the company’s track, destroying the trolley line, and interrupting for a considerable time the operation of its cars, the jury were rightly instructed that they were not entitled to take the house into that street. As directly in point, see *Milville Traction Co. v. Goodwin*, 53 N. J. Eq. 448, 32 Atl. 263; *Williams v. Citizens R. Co.*, 130 Ind. 71, 15 L. R. A. 64, 29 N. E. 408; *Dickson v. Kewanee Elec. Light & Motor Co.*, 53 Ill. App. 379; *Croswell, Electricity*, Sec. 259; 1 *Joyce, Electric Law*, Sec. 481; *Roads and Streets*, 578. See for a valuable discussion of the subject, *Northwestern Telephone Exchange Co. v. Anderson*, 12 N. D. 585, 65 L. R. A. 771, 98 N. W. 706. In *Williams v. Citizens R. Co.*, supra, in deciding a like question: ‘The purpose for which highways are laid out and dedicated is that of travel in the usual modes. It would be strange indeed, if large buildings could be moved along the thronged streets of a city without control or restriction and it would be equally strange if the owner of a building could destroy the property

of others in order to enable him to move his building from one place to another.”

When a telegraph company has placed its poles at a sufficient distance from the traveled portion of a highway to be safe from collision with vehicles passing along it under ordinary circumstances, it is not liable for damages resulting from an accident arising from the breaking and fall of one of the poles when the proximate cause of the breaking and fall thereof was a collision with a runaway team of horses and the wagon to which they were attached.

Allen v. Atl. & Pac. Tel. Co. 21 Hun. (N. Y.), 22.

In Edison Elect. L. & P. Co. v. Blomquist, 185 Fed., 615, a bill was filed to, among other things, restrain defendant, a licensed house mover, from interfering with the wires of complainant in the streets of St. Paul, and after an exhaustive examination of authorities, the Court said:

“After a somewhat careful examination of the case in all its bearings, and of the authorities which have been cited on both sides, I can come to no other conclusion than that the occupation of a public street by a house that is being moved is similar in its nature to the occupation of a street by a deposit of building material. Both are obstructions to the street; both are done under the permission of the city council; both can be prohibited by the city council. In my judgment both are for the *private* benefit of the person in whose favor they are allowed. Neither one is for a *public* purpose, and, consequently, any ordinance of the city requiring the complainants to incur expense or pay out money, to allow the removal of a house, would appropriate their property for a private purpose, and would be unlawful.” Temporary injunction granted.

In the case at bar it is admitted that defendant is sup-

plying a large number of people with electricity for lighting, power, and other purposes. It will be remembered that when the defendant constructed its line in 1908, through that newly settled country, there was but a comparatively small quantity of hay being raised, consequently there was but little use for stackers, and even at the time of the accident there were no other stackers in that vicinity of the size of plaintiff's (tr. pp. 28, 41 and 42). Suppose that the stackers built next year should be 35 feet high, the next year 40 feet and the next year 50 feet. It certainly would not be contended that the hauling of a few of such stackers along that road would be such an ordinary use of the highway as to require defendant to reconstruct its line each year at great expense and to the great detriment of large numbers of people depending on it for light and power.

In conclusion we will say that in any view that may be taken of the testimony of Freedheim and plaintiff's other witnesses, plaintiff utterly failed to show negligence on the part of defendant in the construction or maintenance of its electric line, or any negligence on defendant's part, and the burden was upon him so to do. The testimony of plaintiff himself shows conclusively that his injuries were occasioned by his own reckless conduct.

We contend, therefore, that it was the duty of the lower court to grant the motion for non-suit, that there are no errors in the record, and that the judgment should be affirmed.

Respectfully submitted,

S. H. HAYS,

J. F. NUGENT,

Attorneys for Defendant in Error.

In the United States
Circuit Court of Appeals
For the Ninth District

JAKE M. SHANK, Plaintiff in Error,
vs.
THE GREAT SHOSHONE AND TWIN FALLS
WATER POWER COMPANY,
Defendant in Error.

Petition for Rehearing
by Defendant in Error

S. H. HAYS,
JOHN F. NUGENT,
Attorneys for Defendant in Error.

The Court is requested to grant a rehearing in the above cause.

Defendant in error suggests that there has been :

1st. A misapprehension as to the record in the case.

2nd. That owing to such misapprehension, an erroneous conclusion has been reached.

a. The evidence shows without dispute that the pole line was constructed and the wires placed according to the accepted standards of the locality. Paragraph 5 of the statement of what the evidence tended to prove contained in the opinion is therefore erroneous.

b. There was no evidence whatever of any other hay-stacker of this *height* being upon the highway at any time. Others of similar design were testified to. The matter of height under the opinion of the Court is material.

c. After the building of the pole line the plaintiff remodeled this stacker to make it go under the wires. He "had been told" the wires were 30 feet high but did not measure them. This particular place was in front of his own farm where the wires were plainly visible.

d. He had charge of the stacker and ran it into the wires without care or caution. He should have used the same care at least as at a railroad crossing.

The conditions surrounding the power industry in Idaho were well understood by the trial court.

Electricity is conducted by means of pole lines to the small towns in the sagebrush districts of Idaho.

Steel tower lines such as conduct power to the great cities of the coast are unknown in Idaho and could not be used to connect our small towns with their limited market for power.

Poles must be used for carrying the wires. The height of poles that can be used is limited by the danger from winds and the height of the trees from which the poles are cut.

Hundreds of people must of necessity use electricity. Every time a hay stacker is run against a power line, the users of the power in many lines of work are put in danger.

It is a matter of general knowledge that high voltage lines are impossible of insulation.

These pole lines are suitable for the localities in which they are built and there is no structure other than stackers which can be found on the highways in this district, not excepting the smaller houses, which can not be readily moved under wires twenty-seven (27) feet from the ground.

The locality where the accident occurred was newly reclaimed from its desert character. In 1906, water was first turned on. In 1907, the raising of alfalfa commenced, and in 1908, about half the country was in cultivation. The accident occurred in August, 1910.

The record is in some respects fragmentary, but it appears from the testimony of the witness Chamberlain (pp. 42-43) that the country was new; that for this reason, people borrowed stackers belonging to their neighbors; that for this reason, they were sometimes hauled along the roads and that as the country got older, more and more people owned their own stackers.

The stacker was not on wheels, but the timbers were sloped at the ends so it could be moved (Testimony of Shank, p. 49). Necessarily, its field of action, so far as movement was concerned, was limited.

In this new country the settlers were borrowing each others tools and implements until their farms were better developed, so that the movement of stackers from one place to another was largely a temporary matter.

In agricultural districts where the nature of farming operations is well understood and the use and purpose of stackers, it is held that the courts will take judicial notice that hay stackers are not generally hauled over highways.

Mayhew vs. Yakima Power Co. 130 Pac. 485.

Defendant was in lawful occupation of the highway (Sec. 2837 Rev. Codes, Idaho Laws 1903, p. 343) and it is not claimed that it has not complied with the law or the regulations of the county authorities.

The laws of Idaho recognize the unusual height of railroad trains and that a man standing on a freight car is not unusual, also that power lines cross railroad tracks and therefore it is provided by statute that wires over railroad tracks shall be at a height of twenty-five feet. This is the only statutory provision as to the height of wires.

a. In the opinion there are nine paragraphs stating what the evidence tended to show.

Paragraph five is as follows:

"5. That the standard of construction of such a power line in that country, recognized by engineers and others in charge of construction, carried the lowest transmission wire from thirty to thirty-three feet from the ground."

This we think is an inaccurate statement of the record. The witness Freedhein is the only one on this point. Page 36 he says:

"A pole seven inches in diameter at the top and forty feet long is a suitable pole for all voltages across such a country as the one here in question. It is practically a level country. All the variations in the surface are small undulations."

~~Bottom~~ Page 38:

"I think a forty foot pole is standard and I would put it about eight feet in the ground. There are three wires strung on these poles, one on top and two at the sides of the arm, these are on the cross-arm. It is the general, usual and standard form of construction so far as the wires are concerned."

Standard construction is then a forty foot pole set eight feet in the ground. In other words, a pole extending thirty-two feet above the surface of the ground.

Freedhein further says (bottom p. 38) :

“The lower wires on high voltage from 22,000 to 23,000 would be put about eighty inches to forty or sixty inches, or seventy-two inches apart, and in good construction, the wire on the top is about the distance from these other wires as they are apart.”

The cross-arm would then carry the wires eighty inches apart and the wires on the cross-arm should be about the same distance from the top wire.

This would bring the cross-arm 5.76 feet below the top of the pole, or 26.24 feet above the ground. The insulators would add a distance of twelve or fourteen inches (bottom p. 39), making the height of the wire under standard construction 27.24 or 27.40 feet above the ground. These measurements are at the pole and not on the sag of the wire between poles. The Court will take judicial notice that wires sag, also that they must sag to take up expansion and contraction due to changes in temperature.

The wires at the point of accident were twenty-seven feet three inches above the ground and were, therefore, standard construction.

The statement of the Court in paragraph five above quoted would be to the effect that the construction was not standard. We think the record shows that it was standard.

The fact that the witness testified that other distances might also be standard is immaterial because he was called to show that our construction was not standard.

b. The opinion states that the top of the mast came in contact with the wire (Opinion p. 3).

We respectfully point out that it was the wire over the long end of the boom of the stacker and that as we view it this is undisputed (pp. 27 and 30). The stacker was being hauled *away* from the wires and onto the bridge. (Defts. Ex. 2). The long end of the boom was under the wires when the turn was made to go up to the bridge (p. 54). The pole line was against the fence (p. 48). At the place of accident plaintiff found himself "right up to" his fence. (p. 48). He found himself "near" the fence, left his team and went to the other side of the haystacker (bottom p. 51).

The base of the stacker was 14 feet square with the mast in the center (bottom p. 48). It was in the road and was being pulled onto the bridge and away from the wires. The mast was perpendicular. (Middle p. 55).

Plaintiff was between the stacker and the fence when the stacker stopped and plaintiff went over to the south side of the stacker. Hence the stacker was in the road and not touching the fence and the mast in the middle of the stacker was at a distance of more than seven feet at all times from the fence. It had been pulled away from the fence and up to the bridge. Hence the mast could not have touched the wires. The boom which was a movable affair was under the wires (p. 54).

The uncontradicted testimony shows that hay stackers similar in design to the one in question were in use but that none were of the same height.

As it seems to be held that the company should keep its wires above the height of hay stackers this point becomes material.

One hay stacker of another type—rigid—not moved along the roads, had a mast in the neighborhood of thirty feet in height but of this type used by plaintiff the mast

is usually 20 or 25 feet (p. 44). The Sommer's stacker was 25 feet, Greshaver and Hopson 20 feet, Metham 20 odd feet, Hatfield and Bowers 20 feet and better (p. 28). All the evidence on this point will be found on pages 27, 28, 29, 30, 33, 34, 41, 42, 43, 44 and 47 of the record. Plaintiff had not moved this stacker along a road before (p. 53). There is no evidence that there was any other stacker than this of so great a height moved along the road or under the wires.

Plaintiff had no notice of the height of this stacker and could not be charged with notice of the moving of smaller stackers in such a way as to affect this case.

c. The stacker in question after the building of the power line was remodeled by plaintiff for the purpose of fixing it so it would go under the wires as plaintiff "had been told" the wires were 30 feet above the ground (p. 47), but he did not take the trouble to measure them (p. 48) or to better inform himself. When plaintiff undertook to remodel the stacker for this special purpose he became the acting party and was bound to use due care.

d. We believe under the circumstances that contributory negligence has been conclusively so shown as to become a matter of law.

The accident occurred as follows:

1. On a clear, dry August day when the wires could be plainly seen (p. 26).

2. Plaintiff was well aware of the location of the wires immediately in front of his farm (top p. 48), and knew they carried a dangerous current of electricity and that the wire sagged between the poles (p. 48).

3. Plaintiff helped to remodel the stacker before the accident in 1910, and built it between twenty-seven and

twenty-eight feet high. He "had been told" (middle p. 47) that the wires were thirty (30) feet above the ground, but he never made any measurements (bottom p. 48).

4. Plaintiff knew that the wires sagged between the poles and that he had allowed only two to three feet clearance. He knew that the sag in the wire and undulations in the surface of the ground would bring the top of the stacker close to or above the wires. That the bridge was higher than the surrounding ground, he could see and knew.

5. Knowing all of these facts and fully understanding the danger, he drove the stacker under and in close proximity to the wires without watching to see whether the stacker was in a safe position or not (middle p. 54). In other words, he drove his stacker against the wires without any care or caution whatever, well knowing the danger. Whether the stacker should come in contact with the wires or not was a matter over which plaintiff had control. The moving structure was in his charge.

The danger was more obvious than a train of cars moving at high speed at a railroad crossing.

Failure to use care and be watchful at a railroad crossing is contributory negligence as a matter of law.

Pyle vs. Clark, 79 Fed. 744.

Hart vs. N. P. Ry. Co., 196 Fed. 180.

Blackburn vs. Southern Pac. Co., 34 Or. 215 (55 Pac. 225).

Woolf vs. Wash. Ry. & Nav. Co., 37 Wash 491 (79 Pac. 997).

The duty of a person at a railway crossing seems well settled.

How much clearer is the duty when within two or three

feet of a dangerous current of electricity the presence of which is known to the party.

In conclusion we say :

1. The construction of the pole line and the stringing of the wires was standard construction.

2. There was no other stacker in that locality so high. Notice of smaller stackers would not be notice of this stacker which was remodeled after the line was built.

The movable boom, not the mast, struck the wire.

3. The plaintiff was guilty of contributory negligence as a matter of law.

Where persons are in control of structures which they are moving in proximity to electric wires which they know to be dangerous, they must at least use the same care incumbent on a person crossing a railroad track.

Respectfully submitted,

S. H. HAYS,

Of Counsel.

(Certificate.)

I hereby certify that in my judgment the foregoing petition for rehearing is well founded, and that it is not interposed for delay.


S. H. HAYS,

Of Counsel for Defendant in Error and Petitioner for Rehearing.

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

THE OREGON AND CALIFORNIA RAILROAD
COMPANY, a corporation,

Complainant and Appellant,

VS.

MARIA DE GRUBISSICH, nee MARIA DE PORT-
ALES,

Defendant and Appellee.

Upon Appeal from the United States District
Court for the District of Oregon.

TRANSCRIPT OF RECORD.
(In Three Volumes)

VOLUME I.
Pages 1 to 537, Inclusive

FILED

OCT - 7 1912

No.

IN THE

United States Circuit Court of Appeals

NINTH CIRCUIT

THE OREGON AND CALIFORNIA RAILROAD
COMPANY, a corporation,

Complainant and Appellant,

VS.

MARIA DE GRUBISSICH, nee MARIA DE PORT-
ALES,

Defendant and Appellee.

Upon Appeal from the United States District
Court for the District of Oregon.

TRANSCRIPT OF RECORD.

(In Three Volumes)

VOLUME I.

Pages 1 to 537, Inclusive

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

THE OREGON AND CALIFORNIA RAILROAD
COMPANY, a corporation,

Complainant and Appellant,

VS.

MARIA DE GRUBISSICH, nee MARIA DE PORT-
ALES,

Defendant and Appellee.

**Names and Addresses of Attorneys
upon this Appeal:**

For the Appellant:

Wm. D. Fenton, K. L. Fenton, Ben C. Dey and A. P.
Dobson,

Fenton Bldg., Portland, Oregon

For the Appellee:

Henry Conlin,

Pacific Bldg., San Francisco, Cal.

H. W. Hogue,

Sherlock Bldg., Portland, Oregon

INDEX.

	Page
Amended and Supplemental Answer to Complaint by Way of Cross-bill.....	25
Assignment of Errors.....	1678
Bill of Complaint by Way of Cross-bill.....	1
Bond on Appeal.....	1683
Certificate of Clerk District Court to Deposition of Henry Villard, etc.....	1067
Certificate of Notary Public to Depositions of John P. Duffy et al.....	1012
Certificate of U. S. Examiner in Chancery to Testimony.....	984
Citation on Appeal.....	1685
Complaint, Bill of, by Way of Cross-bill.....	1
Decree.....	85
Deposition of Henry Villard, Attached to Sime's Exhibit No. 3.....	1042
DEPOSITIONS ON BEHALF OF COM- PLAINANT:	
LINCOLN, CHARLES P.	998
Cross-examination....	1005
Redirect Examination....	1007
DUFFY, JOHN P.....	988, 993
Cross-examination....	992
EWING, DANIEL P.....	1008
Cross-examination....	1011
EXHIBITS:	
Complainant's Exhibit—Answer to Bill of Complaint by Way of Cross-bill in Ore-	

EXHIBITS—Continued:

gon & California R. R. Co. vs. Maria de Grubissich etc.....	1650
Complainant's Exhibit No. 6—Statement of Assessed Valuation and Taxes Paid on Lots 5 and 6 of Section 29, etc.....	1083
Complainant's Exhibit No. 7—Minute-book of Oregon Central Railroad Company..	223
Complainant's Exhibit No. 8—"O. & C. R. R. Co., Secretary, Record Deeds, Con- tracts, Agreements, etc.".....	469
Complainant's Exhibit No. 9—Document, Dated Portland, Oregon, August 23, 1905, to W. W. Cotton.....	471
Complainant's Exhibit No. 10—Bond of Richard Koehler, Receiver, etc.....	1090
Complainant's Exhibit No. 11—Order Ap- pointing R. Koehler, Receiver, etc....	1085
Complainant's Exhibit No. 12—Receiver's First Report in Harrison et al. vs. Ore- gon & California R. R. Co.....	1093
Complainant's Exhibit 13—Order Discharg- ing Receiver in Harrison et al. vs. Ore- gon & California R. R. Co.....	1153
Complainant's Exhibit No. 14—Journal of Minutes No. 1 of Oregon and California R. R. Co.....	489
Complainant's Exhibit No. 14—Pages of Minute-book of Oregon & California R. R. Co.....	612
Complainant's Exhibit No. 15—"Oregon & California R. R. Co., Schedule of Deeds,	

EXHIBITS—Continued:

Documents, and Papers Transferred to W. W. Cotton, Secretary, etc., by George H. Andrews.....	604
Complainant's Exhibit No. 16—List of Papers Sent to J. B. Wilcox, March 13, 1905.....	605
Complainant's Exhibit No. 17—Entries in Time-book of Sawmill No. 3, Relating to Gardner Elliott and James Grindley...	667
Complainant's Exhibit No. 21—Agreement Between Oregon Central R. R. Co. and Albert J. Cook, Dated April 23, 1867, in Holladay et al. vs. Elliott et al.....	1155
Complainant's Exhibit No. 21—Agreement Between Oregon Central R. R. Co. and A. J. Cook & Co., Dated May 12, 1868, in Holladay et al. vs. Elliott et al.....	1163
Complainant's Exhibit No. 23—Decree in Holladay et al. vs. Elliott.....	1173
Complainant's Exhibit No. 24—Contract Attached to Complaint, the Complaint, Summons, Answer of S. G. Elliott, and Replication in Holladay et al. vs. Elliott et al.....	1183
Complainant's Exhibit No. 25—Petition, Will, Order Admitting Will, Inven- tories and Order of Discharge in the Matter of Estate of Ben Holladay, De- ceased.....	1214
Complainant's Exhibit No. 26—Deed from	

EXHIBITS—Continued:

Oregon Central R. R. Co. to California & Oregon R. R. Co.....	1298
Complainant's Exhibit No. 27—Articles of Incorporation of Oregon & California R. R. Co.....	1332
Complainant's Exhibit No. 28—Articles of Incorporation of Oregon Central Rail- road Co.....	1337
Complainant's Exhibit No. 29—Joint Reso- lution of the Legislative Assembly of the State of Oregon, Passed October 26, 1868.....	741
Complainant's Exhibit No. 30—Act of Con- gress of July 23, 1866.....	743
Complainant's Exhibit No. 31—Patent to Gardner Elliot.....	1341
Complainant's Exhibit No. 32—Application to Lease from Oregon and California Land Co., "The Ben Holladay Tract".....	1343
Complainant's Exhibit No. 33—Telegram, Charles W. Eberlein—Angell & Fisher, Dated January 21, 1908, etc.....	1344
Complainant's Exhibit No. 34—Letter Dated January 2, 1908, Charles W. Eberlein—Messrs. Angell & Fisher....	1345
Complainant's Exhibit No. 35—Letter, Dated Nov. 5, 1907, Charles W. Eberlein to Messrs. Angell & Fisher.....	1346
Complainant's Exhibit No. 36—Letter, Dated October 10, 1907, Charles W. Eberlein to Messrs. Angell & Fisher...	1347

EXHIBITS—Continued:

Complainant's Exhibit No. 37 — Letter, Dated September 11, 1907, C. G. Sutherland to Henry Conlin.....	1349
Complainant's Exhibit No. 38—Articles of Incorporation of Oregon & California Land Co.....	1350
Complainant's Exhibit No. 39—Deed, Wm. Showers to Ben Holliday & Co.....	1353
Complainant's Exhibit No. 40—Deed, Jas. Grindley to Ben Holliday & Co.....	1355
Complainant's Exhibit No. 41—Deed, Gard- ner Elliott et ux. to Ben Holladay & Co.....	1357
Complainant's Exhibit No. 42—Deed, Jas. Grindley to Ben Holladay & Co.....	1361
Complainant's Exhibit No. 43—Abstract of Title to Certain Lands.....	1363
Complainant's Exhibit No. 44 — Letter, Dated October 30, 1907, Ben Irwin to Messrs. Angell & Fisher.....	1376
Complainant's Exhibit No. 45 — Letter Dated March 1, 1905, Anchor Fence Co. to F. A. Elliot.....	1380
Complainant's Exhibit No. 45—Correspond- ence Between F. A. Elliott and Charles W. Eberlein.....	1382
Complainant's Exhibit Nos. 46, 47 and 48— Extracts from Testimony of Ben Holla- day in Holladay et al. vs. Elliott et al. . .	1385
Complainant's Exhibit No. 49—Deposition	

EXHIBITS—Continued:

of Ben Holladay, in Holladay et al. vs. Elliott et al.	1407
Complainant's Exhibit No. 51—Deposition of Ben Holladay in Nightingale et al. vs. Oregon Central R. R. Co. et al.	1451
Complainant's Exhibit No. 52—Affidavit of Ben Holladay in Nightingale et al. vs. Oregon Central R. R. Co. et al.	1475
Complainant's Exhibit No. 53—Exhibit 21, With Exhibit 10 Attached Thereto, in Nightingale et al. vs. Oregon Central R. R. Co. et al.	1508
Complainant's Exhibit No. 54—Amended Bill of Complaint in Nightingale et al. vs. Oregon Central R. R. Co. et al.	1516
Complainant's Exhibit No. 55 — Letter, Dated February 20, 1907, Charles W. Eberlein to Wm. D. Fenton.	1540
Complainant's Exhibit No. 56 — Letter, Dated January 10, 1908, Charles W. Eberlein to W. D. Fenton.	1541
Complainant's Exhibit No. 57 — Letter, Dated October 10, 1907, Charles W. Eberlein to Wm. D. Fenton.	1542
Complainant's Exhibit No. 58 — Letter, Dated November 11, 1907, Charles W. Eberlein to Wm. D. Fenton.	1543
Complainant's Exhibit No. 59 — Letter, Dated September 22, 1911, W. L. Mul- vey, County Clerk, to Examiner in	

EXHIBITS—Continued:

Grubbisch vs. Oregon and California R. R. Co.....	1544
Complainant's Exhibit No. 61A—Answer to Amended Bill of Complaint in Nightin- gale et al. vs. Oregon Central R. R. Co..	1548
Complainant's Exhibit 61B—Exhibit "G" to Amended Bill of Complaint in Night- ingale et al. vs. Oregon Central R. R. Co. et al.....	1615
Complainant's Exhibit No. 61C—Exhibit "M" to Answer to Amended Bill of Complaint in Nightingale et al. vs. Ore- gon Central R. R. Co. et al.....	1617
Defendant's Exhibit No. 2—Deed, Gideon Tibbetts et ux. to Ben Holladay & Co..	1669
Defendant's Exhibit No 3—Deed, Holladay et ux. to Oregon & California R. R. Co..	1672
Exhibits "K" and "L" Filed with Re- ceiver's First Report in Harrison et al. vs. Oregon & California R. R. Co.....	1134
Portion of Exhibit "L" Filed with Re- ceiver's First Report in Harrison vs. Oregon & California R. R. Co.....	1151
Sime's Exhibit No. 2.....	1014
Sime's Exhibit No. 3—Agreement, Ben Holladay — Heinrich Hohenzemser et al	1026
Sime's Exhibit No. 4—Testimony Taken Before Hugh E. Sime, in Nightengale et al. vs. Oregon Central R. R. Co. et al.....	1069

	Page
Memorandum Opinion.....	80
Minutes of Trial—March 12, 1912.....	79
Notice of Submission of Exceptions to Deposi- tions, etc.....	50
Objections and Exceptions Taken to Depositions, etc.	51
Opinion	80
Order Allowing Appeal.....	1682
Order Certifying, etc., Original Exhibits to U. S. Circuit Court of Appeals.....	1687
Order Enlarging Time to File Transcript, etc....	1686
Order Enlarging Time to Take Testimony.....	49
Order Fixing Time to Take Testimony.....	47
Order Granting Leave to File Amended Answer.	45
Order Referring Case to Examiner in Chancery.	48
Petition for and Order Appointing Receiver in Case C. C. No. 1109.....	1085
Petition for Appeal.....	1676
Replication to Amended Answer.....	46
Stipulation Re Taking of Deposition of John P. Duffy et al.....	987
Stipulation Re Taking of Testimony of J. L. Willcutt et al.....	1013
TESTIMONY ON BEHALF OF COM- PLAINANT:	
APPERSON, J. T.....	673
BRITT, N. E.....	153, 173
Cross-examination.....	164, 173
Redirect Examination....	169
Recross-examination....	170

TESTIMONY ON BEHALF OF COM-
PLAINANT—Continued:

CONLIN, HENRY	909
DOLPH, C. A.....	916
ELAM, A. M.....	87, 97, 98
Cross-examination.....	95, 98
Redirect Examination.....	97
Recross-examination.....	97
ELLIOTT, E. S.....	173, 189
Cross-examination.....	185, 197
Redirect Examination.....	189, 199
Recross-examination.....	189
ELLIOTT, F. A.....	854
Cross-examination.....	862
Redirect Examination.....	863
HALLOCK, R. B.....	211
HENSELMAN, J. H.....	443
Cross-examination.....	444
KELLEY, W. D.....	750
Cross-examination.....	759
KOEHLER, RICHARD	684
Cross-examination.....	713
Redirect Examination.....	723
Recalled	732
Recalled	899, 901
Recalled	930
LORING, DAVID	123
Cross-examination.....	144, 151
Redirect Examination.....	147
Recalled	209
McALLISTER, B. A.....	763

TESTIMONY ON BEHALF OF COM-	
PLAINANT—Continued:	
Cross-examination.....	774
Redirect Examination.....	775
Recross-examination....	776
MARSH, G. H.....	668
Direct Examination.....	897
Recalled	900, 902
MOORE, CHARLES B.....	219
MORELAND, J. C.....	864
Cross-examination....	894
Redirect Examination.....	896
MULVEY, W. L.....	777
SMITH, MRS. MARIA A.....	98
SMITH, SYDNEY	455
Cross-examination....	463
Redirect Examination....	465
STEEL, L. F.....	465
Direct Examination..	728
Recalled	851
WILLS, A. N.....	200
Cross-examination..	207
WISHARD, SAMUEL E.....	107
Cross-examination..	121
Redirect Examination.....	122
Recross-examination....	122
TESTIMONY ON BEHALF OF DEFEND-	
ANT:	
BATTIN, CON. E.....	937
Cross-examination..	952
Redirect Examination....	954

Page

TESTIMONY ON BEHALF OF DEFEND-

ANT—Continued:

Recross-examination.....	955
BATTIN, ORREN A.....	957, 976
Cross-examination....	970
Redirect Examination....	974
Recross-examination..	976
EBERLEIN, CHARLES W.....	803
Cross-examination....	819, 903
Redirect Examination..	847
Recross-examination..	850
O'BRIEN, J. T.....	680
Cross-examination.....	683
Redirect Examination..	683
Recross-examination.....	683
STREET, L. SAMUEL.....	977

*In the Circuit Court of the United States for the
District of Oregon.*

BE IT REMEMBERED, That on the 25 day of April, 1911, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

[Bill of Complaint by Way of Cross Bill.]

*In the Circuit Court of the United States for the
District of Oregon.*

THE OREGON and CALIFORNIA RAILROAD
COMPANY, a corporation,

Complainant,

vs.

MARIA DE GRUBISSICH, nee MARIA DEPOR-
TALES,

Defendant.

BILL OF COMPLAINT BY WAY OF CROSS
BILL.

To the Honorable, the Judges of the United States Circuit Court, for the District of Oregon:

Your orator, the Oregon and California Railroad Company, a corporation organized under the laws of the State of Oregon, and a resident and citizen of said state, brings this its bill of complaint against Maria de Grubissich, nee Maria de Portales, an alien and a subject of the Emperor of Austria-Hungary, residing in the City of Tunis, Africa; and thereupon your orator shows and alleges by this its bill of com-

plaint, by way of cross bill, the following facts, to-wit:

I.

Your orator, the Oregon and California Railroad Company is now and during all the times hereinafter named, and since March 16, 1870, has been, a corporation duly organized and existing under the laws of the State of Oregon, having its office and principal place of business at Portland in the State of Oregon, and as such authorized to acquire, own, construct, and operate railroads and their appurtenances, and real property in connection with and incidental thereto, and other real property in said state.

II.

That the defendant, during all the time hereinafter named has been and now is an alien, and a subject of the Emperor of Austria-Hungary, and resides in the City of Tunis, Africa, and was such at the time of the commencement of that certain action at law now pending in this court wherein said Maria de Grubisich, nee Maria de Portales, is plaintiff, and the Oregon and California Railroad Company, a corporation, is defendant, which is hereinafter more particularly described.

III.

That the matter and amount in dispute in this suit, exclusive of interest and costs, exceeds the sum of Two Thousand Dollars.

IV.

That heretofore, and on the 13th day of March,

1911, the said Maria de Grubissich, nee Maria de Portales, as plaintiff duly commenced an action at law in the Circiut Court of the United States for the District of Oregon, against your orator, the Oregon and California Railroad Company, a corporation, defendant in said action, to recover the possession of the North half of the Northeast quarter ($N\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 32, and the East half of the Southeast quarter ($E\frac{1}{2}$ of $SE\frac{1}{4}$) and Lots 5 and 6, of Section 29, all in Township 1, South Range 2, East of the Willamette Meridian, in Clackamas County, Oregon, and to recover \$100.00 damages for alleged wrongful withholding of the possession of said premises, and the further sum of \$500.00, the alleged value of the rents, issues and profits of the said premises from the 16th day of January, 1904, and the costs and disbursements of said action; and wherein and whereby the said plaintiff in said action alleges that she is the owner in fee simple of said real premises, and entitled to the immediate possession thereof. That the said action is pending in said court, for trial, and that the defendant herewith tenders and files its answer to said amended complaint, to which cause so pending in said court, and to the pleadings and papers therein your orator here refers and makes a part of this its bill of complaint by way of cross bill, as if the same were fully written herein.

V.

Your orator further alleges and shows that on or about the 22nd day of April, 1867, a corporation was

formed under the general incorporation laws of the State of Oregon, under the name of the Oregon Central Railroad Company, for the purpose of building and operating a railroad from Portland, Oregon, southward to the California line, and having its principal office at Salem in said state.

VI.

That on or about the 22nd day of April, 1867, said Oregon Central Railroad Company entered into an agreement with one S. G. Elliott, acting for A. J. Cook, for the construction of 150 miles of its said railroad, which said contract was thereafter modified by supplemental agreement of date November 27, 1867, and that on May 20, 1867, said S. G. Elliott duly assigned 7.20 of said contract to one Perrin, and thereupon said Elliott and Perrin formed a partnership under the name of A. J. Cook & Co., for the purpose of carrying out said contract, and that on the 29th day of May, 1867, said Elliott assigned 1.10 of said contract to one Flint, and in April, 1868, 7.20 thereof to one Frohman, and in March, 1868, 2.20 thereof to one Brooks, and to Gardner Elliott 1.20, and that on or about May 12, 1868, said S. G. Elliott, acting for and in the name of A. J. Cook & Co., entered into another agreement or contract for the construction of the balance of said road from the end of the first 150 miles to the California line, and that on May 2, 1867, A. J. Cook, for the consideration of One Dollar, assigned said contract of April, 1867, to the said S. G. Elliott; that thereafter and on the 12th day of September, 1868, Ben Holladay and C. Temple Emmet and the

said S. G. Elliott formed a partnership under the firm name and style of Ben Holladay & Co., for the purpose of taking over by assignment the said contracts of A. J. Cook and A. J. Cook & Co., with the Oregon Central Railroad Company, and for the purpose of constructing and operating railroads in Oregon, and elsewhere; that the said Ben Holladay was the owner of 24.40 interest in said partnership and assets, the said C. Temple Emmet of 10.40, and the said S. G. Elliott of 6.40 interest, and that all the right, title and interest in all the said contracts thereafter became vested in the said partnership of Ben Holladay & Co.

VII.

That thereupon and thereafter, in the performance of said contracts upon the part of the said Ben Holladay & Co., with the said Oregon Central Railroad Company for the construction of said railroad, and in order to construct the first twenty miles of said railroad from Portland southerly to a point in Clackamas County, Oregon, the said Ben Holladay & Co., for the purpose of acquiring a site for a sawmill for the manufacturing of ties and bridge timbers to be used in the construction of said railroad, and for the purpose of securing timber from which to manufacture said ties and bridge timbers, agreed, for the consideration of \$187.39, to purchase from James Grindley the East half of the Southeast quarter ($E\frac{1}{2}$ of $SE\frac{1}{4}$) and Lots 5 and 6 of Section 29, in Township 1 South, Range 2 East of the Willamette Meridian, containing 149.91 acres, and thereupon and thereafter the said James Grindley then and there being the owner in fee simple

of said premises, in performance of said contract of purchase, and on May 4, 1869, duly conveyed said real premises to said Ben Holladay & Co., which said deed was duly executed, acknowledged and certified so as to be entitled to record, and was recorded on July 24, 1869, in Book "G" at page 179 of the Records of Deeds of Clackamas County, Oregon. That thereafter, and to enable the said Ben Holladay & Co. to further carry out the said contract with the said Oregon Central Railroad Company for the construction of the said twenty miles of railroad as aforesaid, and to acquire a site for a sawmill and timber from which ties and bridge timbers could be manufactured to enable them to perform their said contract with the said Oregon Central Railroad Company, the said Ben Holladay & Co. entered into a contract with Gardner Elliott on or about October 5, 1869, for the purchase of the North half of the Northeast quarter ($N\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 32, in Township 1, South Range 2 East of the Willamette Meridian, Clackamas County, Oregon, and that thereupon, for the consideration of \$200.00 to him in hand paid, by the said Ben Holladay & Co., the said Gardner Elliott then and there being the owner in fee simple of said real premises, duly conveyed the said real premises last above described to the said Ben Holladay & Co. by good and sufficient deed, which said deed was duly attested, acknowledged and certified so as to be entitled to record, and was on October 16, 1869, duly recorded at page 239 of Book "G" of the Records of Deeds for Clackamas County, Oregon. That thereupon and at the date of

the said respective deeds, to-wit, May 4, 1869, and October 5, 1869, the said Ben Holladay & Co. entered into the exclusive possession of the said respective parcels of land so conveyed by the said James Grindley and Gardner Elliott, as aforesaid, and so continued to be and remained in the sole and exclusive possession of said real property under the firm name and style of Ben Holladay & Co. until on or about the 28th day of March, 1870, as hereinafter alleged.

That the said real premises so conveyed to the said Ben Holladay & Co. by the said Gardner Elliott and the said James Grindley are the same real premises described in the plaintiff's amended complaint in the action brought by her in this court against your orator, to which reference has been hereinbefore made.

VIII.

That on the 28th day of March, 1870, the said Ben Holladay & Co. then and there had a settlement with the Oregon Central Railroad Company of and concerning the performance of said contracts and all matters and things in relation thereto, and then and there the said Ben Holladay & Co. and said Oregon Central Railroad Company made and entered into an agreement in words and figures as follows, to-wit:

"KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, Ben Holladay & Co., of Portland, Oregon, in consideration of the cancellation this date by the Oregon Central Railroad Company, at Salem, Oregon, of all certain contracts in writing heretofore existing between said company and the undersigned, in relation to the construction

of a railroad and telegraph line from Portland, Oregon, through the Willamette, Umpqua and Rogue River valleys to the California line, and the agreement of such company to pay the undersigned for all moneys paid out, expended and incurred under such contracts, to-wit: an amount not less than eight hundred thousand dollars in U. S. Gold Coin. It being a part of the arrangement that all the property hereinafter specified should be transferred and delivered to said company, and in consideration of the full sum of One Dollar to us in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, set over, transferred, delivered and conveyed, and by these presents we, Ben Holladay & Co. do sell, assign, transfer, set over, deliver and convey unto said Oregon Central Railroad Company of Salem, Oregon, all sawmills and machinery connected therewith, all machinery, tools, implements, apparatus of every name and description, all live stock, horses, mules, cattle, work oxen, carts, drays, wagons, gearing-tackle, and all leases and all property of every name and nature now owned by us, in the possession of Ben Holladay & Co., all of such property being in the State of Oregon, principally in Multnomah and Clackamas Counties, the same being the mills, machinery, tools, implements, apparatus, live stock, horses, mules, cattle, carts, drays, wagons, gearing-tackle, railroad ties, iron rail spikes and other railroad materials now and heretofore used by us in the construction of the Oregon Central Railroad Company. It being the intention of this conveyance to transfer to said Oregon

Central Railroad Company all property real and personal of every name and nature now owned or possessed by the undersigned in the State of Oregon.

“TO HAVE AND TO HOLD the said property and every part thereof unto the said Oregon Central Railroad Company, of Salem, Oregon, its successors and assigns, absolutely and forever.

“IN WITNESS WHEREOF, We have hereto set our hands and seals this 28th day of March, A. D., 1870.

(Five cent U. S. Stamp cancelled.)

BEN HOLLADAY,

C. TEMPLE EMMET,

By Ben Holladay, Atty. in Fact.

BEN HOLLADAY & CO.,

By Ben Holladay.”

That on said date the said Oregon Central Railroad Company entered into the possession of all the property described in the hereinabove deed and agreement, and among other property then and there entered into the possession of the real premises hereinbefore described and theretofore specifically conveyed by the said James Grindley and the said Gardner Elliott to the said Ben Holladay & Co., and that on the 29th day of March, 1870, the said Oregon Central Railroad Company then and there being the owner and in possession of the said real premises and every part thereof, under said contract or deed of conveyance, so made by the said Ben Holladay & Co. and the said Ben Holladay on the 28th day of March, A. D., 1870, for a valuable consideration to it paid by your

orator, the Oregon and California Railroad Company, duly conveyed to the Oregon and California Railroad Company, and in performance of the said agreement of March 28, 1870, between the said Ben Holladay & Co. and Ben Holladay, and the Oregon Central Railroad Company, hereinbefore set out,—the said real premises hereinbefore described, being described in words and figures as follows, to-wit:

All and singular the railroad and telegraph lines of the said Oregon Central Railroad Company, party of the first part herein, (referring to said deed), now constructed from a point in the town of East Portland, in Multnomah County, State of Oregon, opposite the City of Portland, a distance of over 20 miles running southerly to a point in Clackamas County, State of Oregon; together with all and singular the extensions of such railroad of the said party of the first part (referring to said deed) now in progress of construction north and south from the termini of the said 20 miles completed as aforesaid, to-wit: The whole line of the said railroad, and the rights and franchises of the said party of the first part to construct a railroad and telegraph line from Portland, in Oregon, southerly through the Willamette, Umpqua and Rogue River valleys to the southern boundary of Oregon on the California line; together with all its lands, tenements and hereditaments acquired and appropriated, whether acquired by purchase, gift, by voluntary conveyance, or the judgment or decree of any court, or which shall hereafter be acquired or appropriated for the purpose of right of way for a sin-

gle or double track railroad; and all the appurtenances thereunto belonging; and also all its lands acquired or which hereafter shall be acquired for depots, engine houses, machine shops, superstructures, erections, and fixtures; also all and singular the whole of the property of every name and nature, real, personal and mixed, now owned by the party of the first part herein (meaning Oregon Central Railroad Company), or to which it has any right either legal or equitable, absolute or contingent; also all and singular the franchises, rights and privileges now owned, possessed or acquired, or to which the said party of the first part (meaning Oregon Central Railroad Company), has any right or title, either legal or equitable, absolute or contingent, and also all the rails, bridges, ways, piers, depots, engine houses, carhouses, station houses, warehouses, machine shops, workshops, mills, machinery, engines, tackle, tools, erections, superstructures, fixtures, privileges, franchises and rights of said party of the first part (meaning Oregon Central Railroad Company), and all the rights, tenements and hereditaments and real estate wheresoever and whatsoever now owned by said party of the first part (meaning Oregon Central Railroad Company), or to which it has any right, legal or equitable, absolute or contingent; and all and singular the locomotives, passenger cars, freight cars, and all other cars, carriages, tools, machinery, equipments for said railroad, and now owned by said Oregon Central Railroad Company, party of the first part herein (referring to deed); and also all goods and chattels, horses, mules,

carts, drays, oxen, all live stock, and all implements of every name and nature heretofore or now used in and about the construction of such railroad and telegraph line, and all rolling stock of every kind and description now owned by said party of the first part, together with all rents, issues, income, profits, money, rights, benefits, and advantages derived or to be derived, had or received therefrom by said party of the first part; (meaning Oregon Central Railroad Company).

Also all donations and agreements to give, pay, or transfer to the party of the first part any moneys, lands, tenements, or other property with full power and authority to enforce the collection and transfer of the same.

And also and especially, all the lands, rights, title, franchises, interest, seisin, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which the Oregon Central Railroad Company, party of the first part herein now has, owns, or possesses, or to which it is now of right entitled legally or equitably, or to which it may at any time hereafter become entitled, in and to the franchise and grant of lands made by the Congress of the United States to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon, by an act entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, A. D., 1866,

and amendments thereto;

Also all the lands included in such grant, and all the right, title and interest which the party of the first part now has to the same, hereby giving, granting, and assigned unto said party of the second part all the right, title, interest and claim which the party of the first part now has in, or to the lands, franchises, property, benefits, and emoluments granted or intended to be granted by virtue of the Act of Congress aforesaid, and the acts amendatory thereof or supplemental thereto;

Also all the right, title, and franchise which the party of the first part has for any purpose whatsoever by virtue of any act or resolution of the legislature of the State of Oregon, or the judgment or decree of any court, either State or Federal.

That in and by said description, as aforesaid, the said Oregon Central Railroad Company intended to and did convey to the Oregon and California Railroad Company the said real premises theretofore owned by the said Ben Holladay & Co. and so by the said Ben Holladay & Co. and Ben Holladay, on March 28, 1870, intended to be conveyed to the said Oregon Central Railroad Company.

That the said deed of conveyance so executed on March 29, 1870, by the Oregon Central Railroad Company to the Oregon and California Railroad Company, your orator, was on said date duly acknowledged, attested and certified so as to be entitled to record, and was duly recorded on April 18, 1870, at pages 1 to 23 both inclusive, of Book "H" of the Rec-

ords of Deeds of Clackamas County, Oregon. That thereupon, and on said 29th day of March, 1870, your orator, the Oregon and California Railroad Company, entered into the exclusive possession of the said real premises hereinbefore specifically described, and the whole thereof, and being the same real premises sought to be recovered in the said action so brought by the said defendant as plaintiff, against your orator, in said cause hereinbefore mentioned; and that the said Oregon and California Railroad Company, ever since said 29th day of March, A. D. 1870, has been continuously, and is now, in the sole and exclusive possession of the said premises and every part thereof, and the said Oregon and California Railroad Company and its predecessors in interest have been in the continuous, open, notorious, exclusive, hostile and adverse possession of the said premises and the whole and every part thereof, claiming to be and being the sole and exclusive owner thereof in fee simple, and as such has paid out as state, county and other lawful taxes duly and legally assessed against said premises, a sum in excess of \$1,773.79; and has made permanent improvements thereon of the value of \$500.00, all relying upon the said agreement and deed of date March 28, 1870, so executed by the said Ben Holladay & Co. and Ben Holladay to the Oregon Central Railroad Company. That your orator has diligently searched for said original deed, but has been unable to locate or find the same, and your orator alleges and avers the fact to be that the said instrument has been lost, mislaid or destroyed, and your orator avers, upon

information and belief, that the same was destroyed in the fire and great conflagration in San Francisco, California, on April 18, 1906.

That the defendant is not now, and never has been in the possession of the same or any part thereof, and has no right, title or interest therein, or to the possession thereof, and that neither the defendant nor her ancestors or predecessors or grantors were, nor either thereof was, seized or possessed of the premises described herein, or any part thereof, at any time, and that the said defendant was at and before the commencement of the said action to recover the possession of the said real premises so pending in this court, ever since has been and now is barred by the Statute of Limitations of this state, of any and all right to recover said real property or any part thereof, or to recover any rents, issues or profits, or any part thereof, and that whatever cause of action, if any, which may have accrued to the plaintiff in said action, the defendant herein, to recover possession of said real premises, or any part thereof, or to recover said rents, issues or profits, or any part thereof, accrued to the said plaintiff in said action, the defendant herein. more than ten years prior to the commencement of said action.

IX.

That notwithstanding the said Ben Holladay & Co. and the said Ben Holladay, by their said agreement with the said Oregon Central Railroad Company, and by their said deed to the said Oregon Central Railroad Company hereinbefore set out, undertook to con-

vey the said real premises hereinbefore specifically described, to the said Oregon Central Railroad Company, and so executed the said deed or agreement hereinbefore set out, the same was not witnessed, certified or acknowledged so as to be entitled to record, and the same was never recorded in the Records of Deeds of Clackamas County, Oregon, although the same was on said March 28, A. D., 1870, duly delivered to the said Oregon Central Railroad Company, and thereafter duly delivered to the Oregon and California Railroad Company, and that the only record thereof, so far as known to your orator, is the copy of the same in the Minute Book of the Oregon Central Railroad Company, now in the possession of your orator.

X.

That on or about November 5, 1869, Ben Holladay, and C. Temple Emmet, as plaintiffs, duly commenced in the Circuit Court of the State of Oregon, for Marion County, a suit in equity against S. G. Elliott, Gardner Elliott, Thaddeus R. Brooks, and J. B. Rogers, as defendants in said suit, for an accounting and settlement of the partnership of Ben Holladay & Co., and thereafter such proceedings were had in said court and in said cause, and in the Supreme Court of the State of Oregon in said cause, as that the said partnership of Ben Holladay & Co. was, in July, 1879, duly dissolved, and the said Ben Holladay was then and there adjudged to pay to the said S. G. Elliott the sum of \$20,633, and to the said C. Temple Emmet the sum of \$8,596; and all of the assets and property of

the said Ben Holladay & Co. not then or theretofore sold or conveyed, thereby became the property of Ben Holliday, but that in the settlement of said partnership, and in the dissolution thereof, the said real property hereinbefore specifically described and agreed to be conveyed to and conveyed by the said Ben Holladay & Co. and Ben Holladay, to the Oregon Central Railroad Company, and by the Oregon Central Railroad Company conveyed to the Oregon and California Railroad Company, was treated and considered and deemed to be the property of the Oregon and California Railroad Company, and so recognized and understood by the said Ben Holliday and all the members of the said firm of Ben Holladay & Co.

XI.

That on or about the 8th day of July, 1887, said Ben Holladay died testate in Multnomah County, Oregon, leaving as his sole heirs at law, his widow, Esther Holladay, and his children and grandchildren, as follows: Linda Holladay, now Linda H. Dorcy; Benjamin Campbell Holladay; Maria de Portales, the granddaughter of said Ben Holladay, and the daughter of Jennie de Portales, who was the deceased daughter of said Ben Holladay, and that the said Maria de Portales was on said 8th day of July, 1887, the date of the death of the said Ben Holladay, of the age of about sixteen years, and was then residing in Paris, France, and that she is, as your orator is informed and believes, one and the same person named as plaintiff in the said action, and suing therein as plaintiff under the

name of Maria de Grubissich, nee Maria de Portales, the defendant herein; Paul de Beauceie, son of Polly de Beauceie, a deceased daughter of said Ben Holladay, and that said Paul de Beauceie was then aged about thirteen years, but who has since died without issue; Benjamin Holladay, a grandson of said Ben Holladay, deceased, being the son of Benjamin Holladay, Jr., now deceased, and son of Benjamin Holladay, Sr., now deceased, which said grandson was then residing at Honolulu, and was aged about twelve years, but who has since died, intestate leaving as his sole heir at law his mother, Mrs. William Irwin, residing in the City and County of San Francisco, in the State of California.

That the said Ben Holladay, Sr., died testate, as aforesaid, but that prior to his death, and on the 27th day of September, 1875, he duly executed his Last Will and Testament in writing, by the terms of which said Last Will and Testament he gave, devised and bequeathed to his wife, Esther Holladay, his family residence in the City of Portland, with the appurtenances, and also all the household furniture, plate, books, pictures and stores which might be therein at the time of his death, and the sum of \$50,000; to his son, Ben Holladay, Junior, then living, and now deceased, all his interest in the Steamships Pelican and California; and he thereby undertook to give, devise and bequeath all the rest, residue and remainder of his property and estate, real and personal, wheresoever the same might be situate, of which he might die seized, possessed or entitled at the time of his death,

to his granddaughter, Maria, daughter of his daughter Jennie, then deceased, formerly the wife of Count Arthur de Portales; and by this specific bequest intended to bequeath to the said Maria, the defendant herein, now known as Maria de Grubissich, all the residue and remainder of his estate, real or personal, wheresoever the same might be situate, of which he might die seized or possessed, or to which he might be entitled at the time of his death, and that, as your orator is informed and believes, and so avers the fact to be, the said defendant, as plaintiff in the said action, claims to be the owner of the said real premises in said action so sought to be recovered, under and by virtue of the said residuary clause in the said Last Will and Testament of said Ben Holladay, deceased.

That after the making of said will, and prior to its probate, as hereinafter alleged, there was born to the said Ben Holladay the said daughter Linda, and the said son Benjamin, now Linda H. Dorcy and Ben C. Holladay, and that the said deceased died intestate as to the said Linda H. Dorcy and Ben C. Holladay.

That the said Last Will and Testament so executed as aforesaid was duly admitted to probate on October 11, 1887, by the County Court of Multnomah County, Oregon, and the said estate thereafter duly administered, and the same was finally and forever settled, and the administrator discharged by said Court, on September 10, 1900. That the real premises hereinbefore specifically described were not included in the inventory of said estate, or claimed by the said heirs or devices, or any thereof, or by the administrat-

or appointed to administer said estate, with a copy of the said will annexed, and that the said defendant herein never at any time, until the commencement of her said action, made any claim to the said real premises or any part thereof.

That by reason of the premises, and the matters and things hereinbefore set out, the claim of the said defendant under the said Last Will and Testament of the said Ben Holladay, deceased, and under the state of the record of said title, and under the said description in the said conveyance of March 28, 1870, and March 29th, 1870, hereinbefore specifically set out, the claim of the said defendant so made in said action, and the prosecution of said action to recover said real premises, constitute a cloud upon the title of your orator, to the great and irreparable damage and injury of your orator. That the said Ben Holladay and Ben Holladay & Co., by the said instrument of date March 28, 1870, intended to and attempted to convey the said real premises hereinbefore specifically described, and all their right, title and interest therein or thereto, to the said Oregon Central Railroad Company, and the said Oregon Central Railroad Company, by its deed of March 29, 1870, hereinabove described, intended by said general description to convey the said real premises hereinbefore specifically described, to your orator, but that no formal instrument specifically describing said property was ever executed or delivered in furtherance of said deed or contract of March 28, 1870, although the said Ben Holladay then and there, and during all the time up to his

death, disclaimed any and all interest in or to said real premises or any part thereof, and would have executed a formal instrument or deed of further assurance at any time, conveying by specific description the title to said property to the Oregon and California Railroad Company, if requested so to do.

XII.

That on or about the 29th day of February, 1876, the said Ben Holladay, then and there recognizing his obligation in that behalf, for a valuable consideration made and entered into an agreement in writing, as party of the first part, with Heinrich Hohenemser and others, known as the Frankfort Committee, then and there being the owners and possessors of \$10,255,-100 of the first mortgage bonds of your orator, by which, among other things, the said Holladay covenanted and agreed for himself and his heirs and legal representatives, that he would on demand, either convey to the Oregon and California Railroad Company, to the Oregon Central Railroad Company, to the Oregon Steamship Company, and to the Portland Warehouse & Dock Company, or any of them, or else, as the case might be, would take all necessary legal proceedings in conjunction with such companies or any of them for the purpose of compelling the transfer to said companies or any of them any real estate or other property or rights which equitably belonged to said companies or any of them, if any such property or rights there might be, but which might at that time be held by or stand in the name of said Holladay, or any other person or persons, or corporations in trust.

having been purchased for said corporations, or conveyed to him for their use; and that by reason of the premises, the said defendant herein is bound and obligated by the said covenant and agreement of the said Ben Holladay, to execute any deed of further assurance to your orator that may be necessary in the premises to quiet the title of your orator in and to the said premises hereinbefore specifically described.

XIII.

That your orator has no plain, speedy or adequate remedy at law, and can have no adequate relief except in this court; that unless this court will restrain the defendant from prosecuting the said action to recover the said real property and the rents, issues and profits thereof, as in said action so sought to be recovered, the said defendant will, as plaintiff in said action, prosecute the same, to the great and irreparable injury and damage to your orator, and that the remedy of your orator at law will not be as plain, speedy or adequate, nor will your orator be able to obtain as adequate relief in said action at law as in this court.

WHEREFORE your orator brings this its bill of complaint by way of cross bill, and thereupon your orator prays:

FIRST: That this Honorable Court will grant an order temporarily restraining the defendant from prosecuting said action as plaintiff, or from proceeding further with the prosecution thereof, and that the said law action be stayed pending the hearing of this case.

SECOND: That upon final hearing herein a decree be entered adjudging and decreeing that your orator is the owner in fee simple of the said real premises and of the whole thereof, and that the defendant is not the owner thereof or of any part thereof, and is not entitled to the possession thereof, or any part thereof, or of any rents, issues or profits thereof, and that the defendant herein shall be forever enjoined from prosecuting said action or making any claim to or right in said property, and that the said contract so made by the said Ben Holladay & Co. of date March 28, 1870, be reformed and specifically enforced, and that the said covenants of the said Ben Holladay be enforced against this defendant, and that the defendant be required within a time to be named by this court, to execute a good and sufficient deed of conveyance to your orator to the said real premises, and that in default thereof, the decree of this court shall stand for such deed; that the title of your orator to said premises be quieted, and that your orator may have such other and further relief in the premises as the nature and circumstances of the case may require and to the court may seem meet and equitable; and may it please your Honors to grant unto your orator a writ of injunction conformable to the prayer of this bill and also a writ of this Honorable Court to be directed to the said defendant, Maria de Grubissich, nee Maria de Portales, commanding her on a day certain hereafter, to be named, and under a certain penalty, to be and appear before your Honorable Court and then and there full,

true and perfect answer make to all and singular the premises (but not under oath, answer under oath being expressly hereby waived), and to stand and perform and abide such further orders, directions and decree herein as to your Honors shall seem meet and shall be agreeable to equity and good conscience. And your orator will ever pray.

OREGON AND CALIFORNIA RAILROAD
COMPANY.

By J. P. O'Brien,
Vice President.

BEN C. DAY, WM. D. FENTON, JAS. E. FENTON.

Solicitors for Complainant.

WM. D. FENTON,
Of Counsel for Complainant.

STATE OF OREGON,
County of Multnomah—ss.

I, J. P. O'Brien, being first duly sworn, depose and say: that I am First Vice President of the Oregon and California Railroad Company, complainant above named; that I have read the foregoing bill of complaint, know the contents thereof, and that the same is in all respects true to my own knowledge, except as to the matters and things which are therein stated upon information and belief, and as to those things, I believe the same to be true.

J. P. O'BRIEN.

Subscribed and sworn to before me this 24th day of April, 1911.

N. C. SOULE,
Notary Public for Oregon.

[Endorsed]: Bill of Complaint by way of Cross Bill. Filed April 25, 1911.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 19 day of February, 1912, there was duly filed in said Court, an Amended Answer, in words and figures as follows to wit:

**[Amended and Supplemented Answer to Complaint
by Way of Cross Bill.]**

*In the District Court (Commenced in Circuit Court) of
the United States within and for the District of
Oregon.*

THE OREGON AND CALIFORNIA RAILROAD
COMPANY, a corporation,
Complainant,

vs.

MARIA de GRUBISSICH, nee MARIA de POUR-
TALES,

Defendant.

AMENDED AND SUPPLEMENTAL.
ANSWER TO BILL OF COMPLAINT BY WAY
OF CROSS BILL.

Comes now Maria de Grubissich, the defendant above named and answers the bill of complaint by way of cross bill of the Oregon and California Railroad Company, plaintiff.

1. This defendant now and at all times hereafter saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections

in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for her to make answer to, answering says, that she admits that the plaintiff is, and at all of the times mentioned in said bill of complaint was, a corporation duly organized and existing under the laws of the State of Oregon, having its principal place of business at Portland, in said State, and as such is authorized to acquire, own, construct and operate railroads and their appurtenances, and real property in connection with an incidental thereto, and other real property in said State; but defendant alleges that said plaintiff is not authorized to acquire, own or hold the real property described in said bill of complaint; that said property is not now and never has been and will not be connected with or incidental to any railroad now or heretofore owned, constructed or operated by defendant, or which plaintiff intends to hereafter acquire, own, construct or operate, and is not now and never has been necessary or convenient to the acquiring, owning, construction or operation of any railroad now or heretofore owned, constructed or operated by plaintiff, and that the owning, acquiring or holding of said real property by plaintiff would be beyond and apart from the objects and purposes for which said plaintiff was created and organized or the powers incidental thereto and would be unlawful.

2. Defendant admits that she is and at the times mentioned in said bill of complaint was, an alien and a subject of the Emperor of Austria-Hungary, and

was, at the times mentioned in said bill of complaint a resident of the City of Tunis, Africa.

3. Defendant admits that the amount in dispute in this suit, exclusive of interest and costs exceeds the sum of Two Thousand Dollars.

4. Defendant admits all of paragraph numbered "IV" in said bill of complaint.

5. Defendant denies that on or about the 22nd day of April, 1867, or at any other time, a corporation was formed under the general incorporation laws of the State of Oregon, under the name of the Oregon Central Railroad Company as alleged in paragraph numbered "V" of said bill of complaint.

Defendant further answering says that she has no knowledge or information sufficient to form a belief as to whether on the 22nd day of April, 1867, or at any other time any agreement was entered into between any parties named or known by the name of the Oregon Central Railroad Company and alleged in said complaint to have been a corporation and S. G. Elliott, acting for A. J. Cook, for the construction of 150 miles of railroad, as alleged in paragraph numbered "VI" of said bill of complaint, or whether said alleged contract was thereafter modified by a supplemental agreement dated November 27, 1867, or that on May 20, 1867, said S. G. Elliott duly or otherwise assigned 7.20 of said alleged contract to one Perrin.

whether the said Elliott and said Perrin formed a partnership under the name of A. J. Cook & Co., for the purpose of carrying out said alleged contract, or otherwise, or that on the 29th day of May, 1867, said

Elliott assigned one-tenth of said alleged contract to one Flint, or that in April, 1868, said Elliott assigned 7.20 of said alleged contract to one Frohman, or that in March 1868 said Elliott assigned 2.20 of said alleged contract to one Brooks or 1.20 thereof to Gardiner Elliott; or that said S. G. Elliott, acting for or in behalf of A. J. Cook & Co., or otherwise, entered into another agreement or contract for the construction of any railroad, as alleged in said bill of complaint or otherwise, or that on the 2nd day of May, 1867, A. J. Cook, for the consideration of One Dollar or otherwise, assigned said alleged contract of April, 1867, to said S. G. Elliott, as alleged in said bill of complaint and placing her answer upon that ground therefore denies the same.

6. Defendant admits that on the 12th day of September, 1868, Ben Holladay and C. Temple Emmett and S. G. Elliott, formed a partnership under the firm name and style of Ben Holladay & Co., and that the said Ben Holladay was the owner of 24.40 interest in the said partnership and the assets thereof, and the said C. Temple Emmett was the owner of 10.40 and the said S. G. Elliott was the owner of 6.40 of said partnership and assets; but defendant says that she has no knowledge or information sufficient to form a belief as to whether said partnership was formed for the purpose of taking over by assignment the aforesaid alleged contracts, or whether the title or interest in said alleged contracts thereafter became vested in said partnership of Ben Holladay & Co., as alleged in said bill of complaint and placing her answer on

that ground denies the same.

7. Defendant further answering says that she has no knowledge or information sufficient to form a belief as to whether on the 4th day of May, 1869 the said partnership of Ben Holladay & Company purchased from James Grindley, as alleged in said bill of complaint, or otherwise, the east half of the southeast quarter and Lots 5 and 6 of Section 29, Township 1 South of Range 2 East, Willamette Meridian, or whether on the 16th day of October, 1869, the said partnership purchased from Gardner Elliott, as alleged in said bill of complaint, the North half of the Northeast quarter of Section 32, in Township 1 South of Range 2 East, Willamette Meridian, and placing her answer on that ground, denies the same; and defendant expressly denies that said co-partnership of Ben Holladay & Company purchased said land from said persons, or otherwise, for the purpose of entering upon and holding possession thereof or that said co-partnership ever entered upon or held possession thereof for the purpose of constructing any railroad, whether as alleged in said complaint or otherwise, or for the purpose of acquiring a site for a sawmill, or for the purpose of securing the timber therefrom for the manufacture of ties and bridge timbers, as alleged in said complaint, or otherwise.

And defendant further answering alleges that on the 4th day of May, 1869, the said James Grindley being then and there the owner in fee simple of the said premises first above described, as grantor, made,

executed and delivered a special warranty deed of said premises to Ben Holladay by the name of Ben Holladay & Company, as grantee, which deed was duly recorded in Book "G" of Deeds, at page 179, records of Clackamas County, Oregon; and on the said 16th day of October, 1869, the said Gardner Elliott, being then and there the owner in fee simple of the said premises last above described, as grantor, made, executed and delivered to Ben Holladay, by the name of Ben Holladay & Company, as grantee, a warranty deed of said premises, which deed was duly recorded in Book "C" of Deeds, at page 239 thereof, records of Clackamas County, Oregon. And defendant alleges, upon information and belief, that the lands so as aforesaid deeded to Ben Holladay were purchased from said grantors by said Ben Holladay and not by said co-partnership of Ben Holladay & Company, as alleged in said bill of complaint.

8. Defendant further alleges that after the purchase by and conveyance to said Ben Holladay of the above described tracts of land, the said Ben Holladay continued to own and hold the same and to be and remain in possession thereof until the time of his death on July 8th, 1877, as hereinafter alleged.

9. Defendant further answering says that she has no knowledge or information sufficient to form a belief as to whether on the 28th day of March, 1870, or at any other time, the said Ben Holladay & Co., had a settlement with any party designated the Oregon Central Railroad Company, as alleged in said bill of complaint, and placing her answer upon that ground,

denies the same; and defendant expressly denies that the said Ben Holladay & Co. made or entered into an agreement with any party designated the Oregon Central Railroad Company and alleged in said bill of complaint to have been a corporation in words and figures as alleged and set forth in paragraph number VIII of said bill of complaint or any other contract or agreement whatsoever, by which it was agreed or intended to convey or transfer the real property described in said bill of complaint, and denies that by the said alleged agreement, or by any agreement or act whatsoever, the said Ben Holladay & Co., or Ben Holladay conveyed, or attempted or intended to convey the real estate hereinabove described to any party known as the Oregon Central Railroad Company, and alleged in said bill of complaint to have been a corporation, or to any person or persons or corporation whatsoever; and defendant denies that on the said 28th day of March, 1870, or at any other time, said alleged corporation the Oregon Central Railroad Company, entered into the possession of the real property hereinabove described, or any part thereof.

And defendant denies that said Ben Holladay ever disclaimed any or all interest in said real property described in said bill of complaint, or that he would have executed any formal or other instrument or deed of further assurance or otherwise to complainant conveying thereto by specific description said real property if he had been so requested to do by said complainant.

10. Defendant further answering denies that said alleged corporation the Oregon Central Railroad Company, was ever the owner of said real property above described, or was ever in the possession of the same or any part thereof, and denies that said alleged corporation, by a deed dated March 29th, 1870, as alleged in said bill of complaint, or at any other time or in any other manner whatsoever, conveyed, or agreed or intended to convey said real property or any part thereof, or any right, title, interest or estate therein or thereto, or in or to any part thereof to the plaintiff, the Oregon & California Railroad Company; and defendant denies that said Oregon and California Railroad Company did on the 29th day of March, 1870, as alleged in said bill of complaint, enter into the exclusive or any possession of the real premises described in said bill of complaint, and denies that said Oregon & California Railroad Company was ever, in any possession whatsoever of said real premises, or that said railroad company or its predecessors at any time claimed to own said premises, as alleged in said bill of complaint, or made any claim of right or title thereto or did any act or thing hostile or adverse to the title and possession and right of possession of this defendant and her predecessors in title and interest in said real premises; and defendant alleges that the only improvements of any kind, permanent or otherwise, made upon said premises by any person or corporation, was a wire fence which was caused to be constructed around and enclosing said premises in March 1905; and defendant

alleges upon information and belief that said fence was so constructed by a corporation named the Oregon & California Land Company, upon and around said land in the month of March, 1905, and for the sole and exclusive purpose and with the intention on the part of said Oregon & California Land Company of attempting to seize and hold actual possession of said land continuously for ten years and do thereby obtain title thereto by adverse possession as against this defendant; and defendant denies that said railroad company has ever at any time placed any improvements upon said real property, or any part thereof, and denies that said railroad company placed the said fence or any improvements upon said land in reliance upon any alleged agreement or deed of date March 28, 1870, as alleged in said bill of complaint, or any other agreement or deed whatsoever.

11. And defendant further answering says that she has no knowledge or information sufficient to form a belief as to whether said Oregon and California Railroad Company has paid a sum in excess of \$1773.79 or any other sum as State, County and other lawful taxes duly and legally assessed against said premises, as alleged in said bill of complaint, and placing her answer upon that ground denies the same; and defendant expressly and specifically denies that said railroad company has paid any sum or amount whatsoever as or for taxes assessed against said real property or for, other purposes, in reliance upon any agreement or deed of date March 28, 1870, executed by the said Ben Holladay & Co. or Ben Hol-

laday to the alleged corporation the Oregon Central Railroad Company, as alleged in said bill of complaint; or in reliance upon any agreement or deed whatsoever executed by said Ben Holladay, or other person or persons, and defendant alleges that if said Oregon & California Railroad Company has paid any sum or amount whatsoever as or for taxes assessed against said real property or otherwise, such payment was voluntary and without lawful reason or right or excuse therefor.

12. Further answering defendant says that she has no knowledge or information sufficient to form a belief as to whether complainant has made dilligent or any search for the alleged instrument dated March 28th, 1870, and set forth in paragraph numbered VIII of said bill of complaint, and placing her answer on that ground denies the same; and defendant expressly denies that said alleged copy of instrument as so set forth in said bill of complaint is a copy of any agreement or instrument of which it purports upon such allegations in said bill of complaint to be; and denies that the said alleged instrument of which said alleged instrument dated March 28, 1870, and so set out in said bill of complaint, pretends upon said allegations to be a copy, was ever executed or delivered by said Ben Holladay & Co. or by Ben Holladay, or by any other person or persons whomsoever, to said Oregon Central Railroad Company, and denies that any instrument or agreement or deed of which said document set out in said bill of complaint is alleged to be a copy was ever lost or mislaid, or destroyed at any

time or place.

13. Defendant further answering alleges that after the purchase by and the conveyance to said Ben Holladay in the name of Ben Holladay & Co. of the land described in said bill of complaint by the said James Grindley and the said Gardner Elliott, as alleged in said bill of complaint, said real property continued to be held and owned by said Ben Holladay up to and until the time of the said Ben Holladay's death on July 8, 1887, and defendant admits the allegation in said bill of complaint in paragraph numbered "X" thereof that by a suit commenced in the Circuit Court of the State of Oregon, in and for the County of Marion by Ben Holladay and C. Temple Emmett as plaintiffs against S. G. Elliott, Gardner Elliott, Thaddeus R. Brooks and J. B. Rogers, as defendants, such proceedings were had in said cause in said Circuit Court and in the Supreme Court of said State as that the said co-partnership of Ben Holladay & Co. was in the month of July 1879, duly dissolved, and that the assets and property of said Ben Holladay & Co., not then or theretofore sold or conveyed thereby became the property of said Ben Holladay, and defendant alleges that the real estate in said bill of complaint described had not then or theretofore been sold or conveyed by said partnership and the said Ben Holladay by the said dissolution of said partnership became the sole owner of any and all interest of said co-partnership in or to said real property, if any such interest said co-partnership had and that the said Ben Holladay continued to be the sole

owner and to have and hold the possession thereof, up to and until the time of his death on the 8 th day of July, 1887, as hereinafter alleged; and defendant denies that in the settlement of said co-partnership and in the dissolution thereof the said real property was treated and deemed or treated or deemed to be the property of the Oregon & California Railroad Company, or so recognized or understood by the said Ben Holladay or by all or any of the members of said firm of Ben Holladay & Co., as alleged in said bill of complaint.

14. Defendant further answering denies that said Ben Holladay died on the 8th day of July, 1877, as alleged in said bill of complaint, but alleges that he died on July 8th, 1887, and that on September 27, 1875, he duly executed his last Will and Testament in writing, and that said Will was on the 11th day of October, 1887, duly established and admitted to probate by the County Court of Multnomah County, Oregon, and the estate of said Ben Holladay was thereafter duly administered according to law and the provisions of said last Will and Testament, and the same was finally and forever settled and the administrator thereof finally discharged by said Court on September 10, 1900, and defendant admits that she is a granddaughter of said Ben Holladay, deceased, and that she was named in said Will as the residuary devisee of said Ben Holladay's estate, as alleged in said bill of complaint, and defendant alleges that pursuant to and by virtue of said Will and the devise therein and thereby to defendant, defendant did upon

the death of said Ben Holladay succeed to and become seized and possessed of the real property described in said bill of complaint, and all right, title, interest and estate therein and thereto, subject only to the due and lawful administration of said estate and the expenses thereto and to sale and disposition therein for the payment and satisfaction of the just and lawful debts of said Ben Holladay, deceased, and defendant alleges that the said deeds of James Grindley and Gardner Elliott conveying said real property to said Ben Holladay in the name of Ben Holladay & Company were duly recorded upon the County records of Clackamas County, Oregon, provided by law for the recording of deeds of conveyance and other written evidences of the title to real property, on July 24th, 1869, and October 16, 1869, respectively; that the said Clackamas County is the County in which said land and real premises are situate That no deed of conveyance or other instrument conveying or agreeing therein by said Ben Holladay & Co. or said Ben Holladay, other than the said last Will and Testament and the proceedings had in the said probate Court of Multnomah County, Oregon, thereon, was ever filed for record or recorded in said Clackamas County, or elsewhere.

15. Defendant further answering admits that said real property was not included in the inventory of said estate of Ben Holladay, deceased, but defendant says that she has no knowledge or information sufficient upon which to form a belief as to whether the administrator appointed to administer said estate,

with a copy of the Will annexed, as alleged in said bill of complaint, did not claim said real property as a part of the estate of said Ben Holladay, deceased, and therefore placing her answer on that ground denies that said administrator did not claim said real property as a part of said estate; and defendant expressly denies that she has never made any claim to said real property described in said bill of complaint until the commencement of her said action as alleged in said bill of complaint; and plaintiff alleges that she has at all times since the death of said Ben Holladay and the establishing and probating of his said Will, claimed all of the property real, personal and mixed, and including the real property described in said bill of complaint, under the said residuary devise to her in said Will and which was not otherwise devised or bequeathed therein, or not lawfully sequestrated in the administering of said estate. And defendant alleges further that she has at all times since the death of said Ben Holladay been the owner in fee simple and entitled to the possession of said real property, and that after the death of said Ben Holladay, and up to and until the month of January, 1904, she was in the sole and exclusive possession of said real property, and has so continued ever since in the sole and exclusive possession thereof except for the wrongful entry upon said premises by the said Oregon and California Land Company and the placing thereon by said Land Company of the fence as hereinbefore alleged, and the attempt of said Land Company thereby to obtain actual possession of said premises.

And defendant denies that her right as the owner in fee simple of said premises to recover the possession of said premises and the whole thereof and the rents, issues and profits thereof from said railroad company, and or said land company and to maintain suitable actions and proceedings at law therefor, is barred by the statute of limitations of the State of Oregon, and denies that ten years have elapsed since defendants right to commence and maintain an action at law in ejectment against said railroad company and or said land company to recover therefrom and to obtain the restoration to defendant of the possession of said real premises withheld by said railroad company, and or said land company; and defendant alleges that her right of action against said railroad company and, or said land company for the possession of said real premises accrued in the month of March, 1905, and when said land company so as aforesaid wrongfully entered upon and fenced said premises and undertook to seize and withhold the possession thereof from this defendant and in the attempt and with the design to deprive defendant of her property by holding and maintaining possession of said premises under a claim that such possession was adverse to the title and ownership of this defendant; and that said railroad was never at any time prior to the said month of January, 1904, in the possession of said premises, or any part thereof.

16. Defendant further answering admits that she did, as alleged in said bill of complaint, on the 13th day of March, 1911, commence an action at law in the

Circuit Court of the United States, for the District of Oregon, in which the defendant herein is plaintiff, and the said Oregon & California Railroad Company is defendant to recover from said railroad company the possession of said real property as specifically described in the complaint in said action, and so as aforesaid wrongfully taken and withheld from defendant, and for the sum of \$100.00 as damages for the said wrongful withholding of the possession of said premises and the further sum of \$500.00 as and for the value of the rents, issues and profits of the said premises since the time of the entry thereupon by said railroad company, and defendant alleges that said action is now pending, but that all proceedings therein have by an order of this Court made herein been restrained and stayed.

16½. Further answering, defendant alleges that at the time of the commencement of said action in ejectment on March 13, 1911, defendant was informed and believed that the complainant herein, the Oregon and California Railroad Company was claiming and asserting possession of said real property above described; but defendant has since been informed, and now alleges the fact to be, that said complainant was at the time of the commencement of said action, has not since been and is not now, in any possession whatsoever of said real premises, but that the possession of said premises so claimed and asserted by reason of the fence so constructed upon and enclosing the same as aforesaid, is claimed and asserted and held by the said Oregon and California Land Company, with the full knowledge and consent and without any claim there-

to on the part of the complainant.

17. Further answering defendant says that she has no knowledge or information sufficient to form a belief as to the truth of the matters and things alleged in paragraph numbered XII of said bill of complaint, and basing her answer on that ground she denies that on February 29th, 1876, or at any other time the said Ben Holladay, for a valuable consideration or otherwise made and entered into or made or entered into an agreement in writing as party of the first part with Henrich Hohenemser and others, known as the Frankfort Committee, then and there being the owners of \$10,255,100 of the first mortgage bonds of said Oregon and California Railroad Company, by which said Holladay among other things covenanted and agreed for himself and his heirs and legal representatives that he would on demand either convey to the Oregon and California Railroad Company, or to the Oregon Central Railroad Company or to the Oregon Steamship Company or to the Portland Warehouse and Dock Company or to any or either of them, or else as the case might be, would take all necessary legal proceedings in conjunction with such companies or any of them for the purpose of compelling the transfer to said companies or any of them, any real estate or other property or rights which equitably belonged to said companies or any of them, if any such property or rights there might be, but which might at that time be held by or stand in the name of said Holladay, or any other person or persons or corporations in trust, having been purchas-

ed for said corporations or conveyed to him for their use; and defendant expressly denies that the real property described in said bill of complaint ever was held by or stood in the name of said Ben Holladay or any other person or persons or corporations in trust, having been purchased for said corporation or any or either of them or conveyed to him for their or either of their use; and defendant denies that said Ben Holladay ever was, or that this defendant is, bound or obligated by said alleged agreement, or otherwise, to execute any deed of further assurance or any deed of any kind or character to said Oregon and California Railroad Company of the real premises in said bill of complaint described.

18. Defendant further answering alleges that on or about the 22nd day of April 1867, an attempt was made by one John H. Moores and seven others to form a corporation under the general incorporation laws of the State of Oregon, to be known as the Oregon Central Railroad Company; that said corporation so attempted to be formed is the same as alleged in said bill of complaint of that name, and articles of incorporation therefor were filed on said date with the Secretary of State of the State of Oregon; that the purposes and objects for which said corporation was attempted to be formed, as contained and set forth in said articles of incorporation was to construct a railroad with all the necessary branches, fixtures, buildings and appurtenances from Portland, in Oregon, southerly about three hundred miles to the California line, to maintain the said road in good condition and

repair and to employ the same in the transportation of freight and passengers and freight, and defendant alleges that said corporation so attempted to be formed was not by said articles of incorporation and under the laws of the said State of Oregon authorized or empowered to purchase, acquire, own or hold land or real estate other than such as might be necessary or convenient in the prosecution and carrying on of the enterprise occupation and business for which it was attempted to form said corporation, that the land and real property described in said bill of complaint and which it is therein alleged the said Ben Holladay conveyed or agreed to convey to said alleged corporation was not necessary or convenient for use thereby in the prosecution or carrying on of the said enterprise, occupation and business so contained in said articles of incorporation, and was not property which, or any part of which said alleged corporation was authorized or empowered by law to purchase, acquire, own or hold

19. Defendant further answering says that the complainants cause of action, against this defendant, if any it had, by reason of any of the matters or things alleged and contained in its said bill of complaint herein, is barred by the complainants laches, and that the complainants right or cause of action, or right to have any relief sought or prayed for in said bill of complaint by reason of any of the matters or things therein alleged or contained, if any it had, was at and before the bringing of complainant's said bill and the commencement of this suit barred by the

statute of limitations, of the State of Oregon, and that any and all cause or causes of action, if any, alleged or attempted to be set forth in said bill of complaint accrued more than ten years prior to the commencement of this action.

20. Defendant further answering denies that the complainant, if it were entitled to any relief upon the matters and things set forth in its said bill of complaint, has not a plain adequate and complete remedy at law, and defendant alleges that if said complainant were entitled to any relief upon the matters and things charged and alleged in its said bill, it could have as plain and adequate and complete remedy at law as could be obtained in equity, and that this Honorable Court is therefore without jurisdiction in this suit.

WHEREFORE this defendant having fully answered, conferred, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to her best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

MARIA DE GRUBISSICH,

By Henry Conlin, her Attorney,

Defendant.

HENRY CONLIN and H. W. HOGUE,

Solicitor and Counsel for Defendant.

I hereby certify that the foregoing answer is, in my opinion, well founded in point of law.

HENRY CONLIN,
Counsel for Defendant.

Dated February 5, 1912.

[Endorsed]: Amended and Supplemental Answer.
Filed Feb. 19, 1912.

A. M. CANNON,
Clerk U S. District Court.

And afterwards, to wit, on Monday, the 19 day of February, 1912, the same being the 89 Judicial day of the Regular November, 1911, Term of said Court; Present: the Honorable R. S. BEAN, Unit States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Granting Leave to File Amended Answer.]

*In the District Court of the United States for the
District of Oregon.*

No. 3745.

February 19, 1912.

OREGON & CALIFORNIA RAILROAD COM-
PANY,

vs.

MARIA DE GRUBISSICH.

This cause heretofore submitted on motion to file Amended Answer came on regularly at this time for the decision of the Court and thereupon after due consideration, the Court having been fully advised in the premises, it is Ordered that said motion be and the same hereby is sustained and leave is hereby granted

defendant to file amended answer herein and it is Ordered that plaintiff have and it is hereby granted 10 days within which to take such action as it may deem advisable in reference to said amended answer.

And afterwords, to wit, on the 12 day of March, 1912, there was duly filed in said Court, a Replication, in words and figures as follow sto wit:

[Replication to Amended Answer.]

*in the District Court (Commenced in the Circuit Court)
of the United States within and for the
District of Oregon.*

THE OREGON AND CALIFORNIA RAILROAD
COMPANY, a corporation,

Complainant,

vs.

MARIA de GRUBISSICH, nee MARIA de POUR-
TALES,

This replicant, OREGON AND CALIFORNIA RAILROAD COMPANY, a corporation organized under the laws of the State of Oregon, saving and reserving to itself any and all manner of advantages of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the amended and supplemental answer of the defendant MARIA de GRUBISSICH, nee MARIA de POURTALES, for replication thereunto saith:

That it doth and will ever maintain and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the amended and supplemental answer of the said de-

fendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in said amended and supplemental answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this replication is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in its bill it hath already prayed.

BEN C. DEY, KENNETH L. FENTON & WM. D. FENTON,

Solicitors for Complainant.

[Endorsed]: Replication. Filed Mar. 12, 1912

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 28 day of August, 1911, there was duly filed in said Court, an Order, in words and figures as follows to wit:

[Order Fixing Time to Take Testimony.]

*In the Circuit Court of the United States in and for the
District of Oregon.*

OREGON & CALIFORNIA RAILROAD COM-
PANY, a corporation,

Complainant,

vs.

MARIA de GRUBISSICH, nee MARIA de POUR-
TALES,

Defendant,

The above entitled cause coming on this 28th day of August, 1911, to be heard on motion of defendant

for an order to assign and fix time within which the parties respectively shall take their evidence, and counsel being heard for the respective parties, it is hereby ordered that the plaintiff shall have until the 20th day of September, 1911, within which to take his evidence in chief, and that the defendant thereafter shall have until the 20th day of October, 1911, within which to take her evidence, and that the plaintiff thereafter shall have until the 7th day of November, 1911, in which to take his evidence in rebuttal.

Dated, August 28th, 1911.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Order Assigning Time to Take Testimony. Filed Aug. 28, 1911

G. H. MARSH,

Clerk.

By J. W. Marsh, Deputy.

And afterwards, to wit, on Monday, the 11 day of September, 1911 the same being the 131 Judicial day of the Regular April, 1912, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Referring Case to Examiner.]

In the Circuit Court of the United States for the District of Oregon.

No. 3745.

September 11, 1911.

THE OREGON & CALIFORNIA RAILROAD
CO.,

vs.

MARIA de GRUBISSICH,

Now, at this day, come the plaintiff by Mr. William D. Fenton, of counsel, and the defendant by Mr. Harry W. Hogue, of counsel; whereupon, on motion of said plaintiff, it is Ordered that this cause be, and the same is hereby referred to George A. Brodie, Examiner in Chancery, to take the testimony herein.

And afterwards, to wit, on Wednesday, the 20 day of September, 1911, the same being the 139 Judicial day of the Regular April, 1912, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Enlarging Time to Take Testimony.]

*In the Circuit Court of the United States for the
District of Oregon.*

No. 3745.

September 20, 1911.

OREGON & CALIFORNIA RAILROAD COM-
PANY,

vs.

MARIA de GRUBISSICH,

Now, at this day, come the plaintiff by Mr. William D. Fenton, of counsel, and the defendant by Mr. Henry Conlin, of counsel, whereupon on motion of said plaintiff, It is ORDERED that the time hereto-

fore fixed within which said plaintiff is required to take its testimony herein, be, and the same is hereby, extended ten days, and on motion of said defendant It is ORDERED that the time within which said defendant is required to take her testimony in this cause, be, and the same is hereby, extended ten days.

And afterwards, to wit, on the 18 day of December, 1912, there was duly filed in said Court, Exceptions to Depositions and Evidence, in words and figures as follows to wit:

[Exceptions to Depositions and Evidence.]

*In the Circuit Court of the United States in and for the
District of Oregon.*

THE OREGON & CALIFORNIA RAILROAD
COMPANY, a corporation,

Complainant,

vs.

MARIA de GRUBISSICH, nee MARIA de POUR-
TALES,

Defendant.

TO THE COMPLAINANT ABOVE NAMED, and
to BEN C. DEY, JAMES E. FENTON, and WM
D. FENTON, Solicitors for Complainant:

You will please take notice that the defendant will, pursuant to Rule 25 of this Court, submit to the Court for decision, at the court room of said Court in the Postoffice Building, in the City of Portland, County of Multnomah and State of Oregon, on Tuesday, the 12 day of March, 1912, at ten o'clock A. M., or as soon

thereafter as counsel can be heard, the objections and exceptions made and taken by the defendant to the depositions and evidence taken and offered by complainant herein before George A. Brodie, Esq., Examiner appointed to take the evidence in this cause, and which objections and exceptions appear in a list and statement thereof attached hereto and herewith served upon you.

Dated December 18, 1911.

HENRY CONLIN and H. W. HOGUE,
Attorneys for Defendant.

*In the Circuit Court of the United States in and for the
District of Oregon.*

THE OREGON & CALIFORNIA RAILROAD
COMPANY, a corporation,
Complainant,

vs.

MARIA de GRUBISSICH, nee MARIA de POUR-
TALES,

Defendant.

OBJECTIONS AND EXCEPTIONS TAKEN
BY DEFENDANT HEREIN TO THE DEPOSI-
TIONS, TESTIMONY AND EVIDENCE OF-
FERED AND TAKEN IN THE ABOVE ENTI-
TLED CAUSE ON BEHALF OF THE COM-
PLAINANT, BEFORE GEORGE A. BRODIE,
ESQ., EXAMINER.

The defendant in the above entitled cause, saving and reserving unto herself all objections and exceptions, and all manner of benefits to defendant to be

had from any and all objections and exceptions heretofore at any time taken or made to the testimony of witnesses, records, documents, writings and matters and things offered, introduced or received in evidence by and on behalf of the complainant in said cause before George A. Brodie, Esq., Examiner appointed to take the evidence in said cause, hereby further objects and excepts to said testimony of witnesses, records, documents, writings, matters and things offered or introduced in evidence by and on behalf of said complainant before said George A. Brodie, Esq., Examiner, and objects and excepts to the receipt or admission in evidence in said cause and in the trial and hearing thereof of such testimony, records, documents, writings, matters and things herein and hereafter referred to, and in the manner and for the reasons and upon the grounds hereinafter stated.

FIRST EXCEPTION.

To Complainant's Exhibit 7, offered in evidence as the minute book of the Oregon Central Railroad Company, alleged to have been a corporation.

For that the same has not been identified or authenticated as such minute book of said alleged corporation; that said Exhibit 7 and the contents and all thereof is not the best evidence of any deed, agreement, document, instrument, writing, matter or thing alleged or pleaded in complainant's bill of complaint, or involved in any issue in this cause, or relevant or material to any issue in this cause; that no foundation has been laid by any evidence in this cause for the

introduction or admission in this cause of said Exhibit 7, or any part or portion thereof, as secondary evidence of any deed, agreement, document, instrument, writing, matter or thing alleged or pleaded in said bill, or in issue, or sought or attempted to be shown in evidence in this cause, because there is no evidence in this cause that any matter or thing set out, written or spread upon the pages of said Exhibit 7 is a copy of any deed, agreement, document, instrument or writing alleged or pleaded in said bill, or in issue, or relevant or material to any issue in this cause, or sought or attempted to be proved or established in this cause on behalf of complainant; and there is no evidence that any such alleged or pretended deed, agreement, document, instrument or writing as is claimed or pretended to be copied, set out, written or spread upon the pages of said Exhibit 7 ever existed, or was ever executed or delivered, or was ever lost, or if lost, that any proper or sufficient search therefor has been made by or on behalf of said complainant.

That the alleged and pretended copy of an instrument or document in writing set out, written and spread upon the pages of said book Exhibit 7, at pages 175 and 176 thereof, or elsewhere in said book, and alleged in complainant's said bill to be a copy of a certain instrument in writing dated March 28th, 1870, and signed by Ben Holladay & Company and Ben Holladay and C. Temple Emmett, and alleged to have been delivered to the Oregon Central Railroad Company, and any and all alleged or pretended copies of said document written or spread upon the pages of

said Exhibit 7, are incompetent, irrelevant and immaterial and are not the best evidence of such alleged and pretended document and are not shown by any evidence in this case to be copies of said alleged document, and there has been no foundation laid by any evidence in this cause for their introduction or for the introduction or admission in this cause of said Exhibit 7 as secondary evidence of any such alleged document because there is no evidence in this cause that any matter or thing written upon the pages of said book Exhibit 7, at pages 175 and 176, or elsewhere, is a copy of said alleged document, or that said alleged document ever existed as a genuine instrument, or was ever executed or delivered as alleged in said bill of complaint or otherwise, or that said alleged document was ever lost, or that a proper or diligent, or any search was ever made by complainant, or by any person or persons for and in its behalf, at any time or place, for said alleged document.

That said Exhibit 7 and each and every part thereof is impertinent.

That said Exhibit 7 and all and each and every part and portion thereof are incompetent and inadmissible as evidence in this cause against this defendant, because said Exhibit 7 purports and is alleged and claimed on behalf of complainant to be a private book of entries of matters and things relating to the private business of the Oregon Central Railroad Company, alleged by complainant to have been a corporation, and for its benefit, and not for the benefit of this defendant or of her predecessors or privies in inter-

est and title to the land involved in this suit; and it does not appear from the evidence in this cause that any matter or thing set out, written or spread upon the pages of said book Exhibit 7 claimed or pretended by complainant to be a copy of any deed, agreement, document, writing or transaction alleged, pleaded or referred to in complainant's said bill was so set out, written or spread upon the pages of said book at the instance or with the knowledge or consent or assent of this defendant or of her predecessors or privies in interest and title to said land, and that the same and each and every part and portion thereof is hearsay.

SECOND EXCEPTION.

To Complainant's Exhibit 14, (minute book of Oregon and California Railroad Company), in addition to the objections and exceptions heretofore made and taken thereto:

For that the said Exhibit 14 and all and each and every part and portion thereof is incompetent, irrelevant and immaterial and is not the best evidence of any deed, agreement, document, instrument, writing or transaction alleged or pleaded in complainant's said bill, or in issue in this cause, or sought or attempted to be introduced in evidence in this cause; that no foundation has been laid by any evidence in this cause for the introduction or admission thereof, or of any part or portion thereof, as secondary evidence of any deed, agreement, document, instrument, writing or transaction alleged or pleaded in said bill, or in issue in this cause, or sought or attempted to

be introduced in evidence in this cause on behalf of the complainant.

That said book Exhibit 14 has not been properly authenticated or identified as such minute book of said Oregon & California Railroad Company, and that in so far as there is set out, written or spread upon the pages 191, 192, 193, 194 and subsequent pages thereof an alleged and pretended copy of an alleged and pretended agreement in writing signed by Ben Holladay, dated February 29, 1876, it is not shown to be a copy of any such alleged agreement and is not the best evidence of any such alleged agreement, and no foundation has been laid by any evidence in this case therefor as secondary evidence of any such alleged or pretended agreement, because said alleged and pretended copy written upon the pages of said Exhibit 14 has not been identified or authenticated as a compared or correct copy of said alleged agreement, and no proof of its having been made has been offered, and there is not evidence in this cause that any such agreement or writing ever existed, or was ever executed or delivered by Ben Holladay; that there is no evidence in this cause that said alleged agreement, if it ever existed, is lost, or that any proper or sufficient search therefor, if lost, has been made by complainant or by any person or persons for and in its behalf at any time or place.

Defendant for the same reasons and upon the same grounds as last aforesaid, objects and excepts to the introduction in evidence in this cause of that portion of page 194 of said Exhibit 14 read by counsel for

complainant and copied into the testimony of R. Koehler, a witness examined in this cause, taken before said George A. Brodie, Examiner, and by him transcribed at pages 407, 408 and 409 of the evidence taken and transcribed by him herein.

That said Exhibit 14 and all and each and every part and portion thereof is incompetent, irrelevant and immaterial as evidence in this cause against this defendant, because said Exhibit purports and is alleged and claimed on behalf of complainant to be and is a private book of entries of matters and things relating to the private business and affairs of the Oregon & California Railroad Company, a corporation, and for its own use and benefit, and not for the use or benefit of this defendant or of her predecessors or privies in interest or title in and to the lands involved in this suit, and it does not appear by any evidence in this suit that any matter set out or written upon the pages of said Exhibit 14 and claimed or pretended to be a copy of any deed, agreement or writing alleged or pleaded in complainant's said bill or in issue in this cause was so set out or written upon the pages of said book at the instance or with the knowledge or assent of this defendant or her predecessors or privies in interest and title in and to said lands, and that the same and each and every part and portion thereof is hearsay.

THIRD EXCEPTION

Complainant's Exhibit 9:

For that said Exhibit 9 is incompetent, irrelevant and immaterial, because it is not properly authenticat-

ed or identified and no proof has been offered that it was ever made, and because it does not, nor does any part or portion thereof tend to prove or establish the existence, execution, delivery, contents or the loss, or any proper or sufficient search therefor if lost, of any deed, agreement, document, instrument, writing or transaction alleged or pleaded in complainant's said bill, or any matter or thing involved in any issue in this cause, and that the same is impertinent.

FOURTH EXCEPTION.

Complainant's Exhibit 15:

For that said Exhibit 15 is incompetent, irrelevant and immaterial, because it is not properly authenticated or identified and no proof has been offered herein that it was ever made, and because it does not nor does any part or portion thereof tend to prove or establish the existence, execution, delivery, contents, or the loss, or any proper or sufficient search therefor, if lost, of any deed, agreement, writing or transaction alleged or pleaded in complainant's said bill, or any matter or thing involved in any issue in this case, and that the same is impertinent. That said Exhibit 15 is not the best evidence of the existence, execution, delivery or contents of any deed, agreement, writing or transaction alleged or pleaded in complainant's said bill, and no foundation therefor has been laid by any evidence in this cause as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or any proper

or sufficient search therefor, if lost, by complainant, of any deed, agreement, writing or transaction alleged or pleaded in said bill or in issue in this cause.

FIFTH EXCEPTION.

Complainant's Exhibit 16:

For that said Exhibit 16 is incompetent, irrelevant and immaterial, because it is not properly authenticated or identified and no proof has been offered herein that it was ever made, and because it does not nor does any part or portion thereof tend to prove or establish any fact alleged or pleaded in complainant's bill, or in issue in this cause, and that the same is impertinent. That said Exhibit 16 is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's bill, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill or in issue in this cause, because there is no evidence in this cause of the existence, delivery, contents, or the loss, or any proper or sufficient search therefor by complainant, if lost, of any deed, agreement, writing or transaction alleged or pleaded in said bill of complaint, or in issue in this cause.

SIXTH EXCEPTION.

Complainant's Exhibit 17:

For that said Exhibit 17 and all and each and every part and portion thereof is incompetent, irrelevant and immaterial, because it is not properly authenticated or identified and no proof has been offered

herein that it was ever made, and the same is a self serving statement on behalf of said complainant, and because it does not nor does any part or portion thereof tend to prove any fact alleged or pleaded in complainant's bill, or in issue in this cause, and that the same is impertinent. That said Exhibit 17 is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's said bill, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or any proper or sufficient search therefor by complainant, if lost, of any deed, agreement, writing or transaction alleged or pleaded in said bill of complaint, or in issue in this cause.

SEVENTH EXCEPTION.

Complainant's Exhibit 8:

For that said Exhibit 8 and all and each and every part thereof is incompetent, irrelevant and immaterial, because it is a book kept by complainant and is a self serving record in its behalf, because it is not properly authenticated or identified and no proof has been offered herein that it was ever made; that said Exhibit 8 is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's bill of complaint, or in issue in this cause, and no foundation has been laid by any evidence in this

cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor, by complainant, if lost, of any deed, agreement, writing or transaction alleged or pleaded in said bill of complaint, or in issue in this cause; and that the same is impertinent.

EIGHTH EXCEPTION.

Complainant's Exhibit 12:

For that said Exhibit 12 and all and each and every part thereof is incompetent, irrelevant and immaterial, because it has not been properly authenticated or identified and no proof has been offered herein that it was ever made, that it is a self serving document on behalf of complainant; that said Exhibit 12 is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's bill of complaint, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor a secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search by complainant therefor, if lost, of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause; and that the same is impertinent.

NINTH EXCEPTION.

Complainant's Exhibit 19:

For that said Exhibit 19 and all and each and every part thereof is incompetent, irrevelant and immeterial because it is not properly authenticated or identified and no proof has been offered herein that it was ever made; that it is not the best evidence of any deed, agreement, writing or tansaction alleged or pleaded in complainant's bill of complaint, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor, if lost, of any deed, agreement, writing or tansaction alleged or pleaded in said bill or in issue in this cause; and that the same is impertinant.

TENTH EXCEPTION.

Complainant's Exhibit 20:

For that said Exhibit 20 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly identified or authenticated and there is no proof offered herein that the same was ever made; that it is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's bill of complaint, and no foundation has bee laid by any evidence in this cause therefor as secondary evidence of any deal, agreement, writing,

or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search by complainant, if lost, of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause; and that the same is impertinent.

ELEVENTH EXCEPTION.

Complainant's Exhibit 21:

For that said Exhibit 21 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that it is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's bill of complaint or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor by complainant, if lost, of any deed, agreement, writing, or transaction, alleged or pledged in said bill, or in issue in this cause; and that the same is impertinent.

TWELFTH EXCEPTION.

Claimant's Exhibit 22:

For that said Exhibit 22 and all and each and every part thereof is incompetent, irrelevant and immater-

ial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that it is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor by complainant, if lost, of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause; and that the same is impertinent.

THIRTEENTH EXCEPTION.

Complainant's Exhibit 23:

For that said Exhibit 23 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that it is not the best evidence of any deed, agreement, writing or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery contents, or the loss, or of any proper or suffi-

cient search therefor by complainant, if lost, of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause. That said Exhibit 23 purports to be a decree in another and different suit and between other and different parties than the parties to this suit, or their predecessors or privies in interest and title to the lands involved in this suit; that the subject matter and issues involved in such other suit and between said other parties is not the same, but is different and wholly distinct from the subject matter and issues involved in this suit,, or any of them, and the matters and things and the subject matter and issues adjudicated and determined in said other suit and between the parties thereto are not the same but are wholly different and distinct from the subject matter or the issues, or any of them, involved in this suit; that none of the matters or things alleged or pleaded in complainant's bill herein, or in issue between the parties to this cause, and particularly the title to the land involved in this suit, were litigated in said other suit, or adjudicated or determined therein. That said Exhibit 23 is impertinent.

FOURTEENTH EXCEPTION.

Complainant's Exhibit 24:

For that said Exhibit 24 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that said exhibit is not, nor is any part thereof, shown to be a copy of, and is not the best evidence of any

deed, agreement, writing or transaction alleged or pleaded in complainant's bill of complaint herein, or involved in any issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor if lost, of any deed, agreement, writing, or transaction alleged or pleaded in said bill, or in issue in this cause; that the same is impertinent. That said Exhibit 24 purports to be the complaint, answer and reply in a suit in the Circuit Court of the State of Oregon between other and different parties than the parties to this suit, or their privies in interest or title, and for another and different and distinct cause of action and involving other and wholly different and distinct subject matter and issues than are involved in this cause; that no right, title, interest or estate of this defendant or her predecessors or privies in interest or title to the lands involved in this suit were alleged or pleaded, or admitted or denied in said other suit, or in any part or portion of said Exhibit 24, by this defendant or her predecessors or privies in interest or title. That said suit in which said Exhibit 24 purports to be the pleadings aforesaid was commenced prior to any alleged conveyance or agreement to convey the land involved in this suit by Ben Holladay & Co. to the Oregon Central Railroad Company.

FIFTEENTH EXCEPTION.

Complainant's Exhibit 46:

For that said Exhibit 46 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that it is not shown to be a copy of and is not the best evidence of any deed, agreement, writing document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause that any deed, agreement to convey, writing, document or transaction alleged in said bill, or in issue in this cause, ever existed or was executed or delivered, or of the contents thereof, or the loss, or of any proper or sufficient search therefor if lost, by complainant, at any time or place. That said Exhibit 46 purports to be a deposition of a witness taken in another and different suit, between other and different parties than the parties to this suit, and involving other and different subject matter and issues than are involved in this cause; and that the same is impertient.

SIXTEENTH EXCEPTION.

Complainant's Exhibit 47:

For that said Exhibit 47 and all and each and every part thereof is incompetent, irrelevant and immater-

ial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that it is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and is not shown to be a copy thereof, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause, because there is not evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor by complainant if lost, of any deed, agreement to convey, writing, document, or transaction alleged or pleaded in said bill, or in issue in this cause; and that the same is impertinent; that the same purports to be a deposition of a witness taken in another and different cause and between other and different parties than the parties to this suit, and involving other and wholly different and distinct issues and subject matter than are involved in this cause.

SEVENTEENTH EXCEPTION.

Complainant's Exhibit 48:

For that said Exhibit 48 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that it is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged

or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor if lost, by complainant, of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause; that said exhibit purports to be the deposition of a witness who is not a party to this suit and in another and different suit, to which he was not a party, and which was between other and different parties than the parties to this suit, and involving other and different subject matter and issues than are involved in this suit; and that the same is impertinent

EIGHTEENTH EXCEPTION.

Complainant's Exhibit 49:

For that said Exhibit 49 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that it is not shown to be a copy of and is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evi-

dence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill or in issue in this cause, because there is not evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search by complainant therefor, if lost, of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause; that said exhibit purports to be a deposition of a witness taken in another and different suit and between other and different parties than the parties to this suit, and involving other and wholly different and distinct issues and subject matter than are involved in this suit; that the same is **impertinent**.

NINETEENTH EXCEPTION.

Complainant's Exhibit 50:

For that said Exhibit 50 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered that it was ever made; that the same is not shown to be a copy of and is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in

this cause of the existence, execution, delivery, contents, or the loss of any proper or sufficient search therefor by complainant if lost, of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill or in issue in this cause; that said exhibit purports to be the deposition of a witness taken in another and different suit and between other and different parties than the parties to this suit, and involving other and wholly different and distinct issues and subject matter than are involved in this suit, and said witness appears not to have been a party to said other suit and is not a party to this suit, nor privy in interest or title to the parties to this suit; and that the same is impertinent.

TWENTIETH EXCEPTION.

Complainant's Exhibit 51:

For that said Exhibit 51 and all and each and every part thereof is incompetent, irrelevant immaterial; that it is not properly authenticated or identified and there has been no proof offered that the same was ever made; that it is not shown to be a copy of and is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, de-

livery, contents, or the loss, or of any proper or sufficient search therefor, if lost, of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause; that said exhibit purports to be a deposition of a witness taken in another and different suit and between other and different parties than the parties to this suit, and said witness is not shown to have been a party to said other and different suit, and said other and different suit involved other and wholly different and distinct issues and subject matter than are involved in this suit; and that the same is impertinent.

TWENTY-FIRST EXCEPTION

Complainant's Exhibit 52

For that said Exhibit 52 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it is not properly authenticated or identified and no proof has been offered herein that it was ever made; that it is not shown to be a copy of and is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search by complainant therefor, if lost, of any deed, agreement

to convey, document, writing or transaction alleged or pleaded in said bill or in issue in this cause; that said exhibit 52 purports to be an affidavit made by a party in relation to another and different suit who was not a party to said suit, and between other and different parties than the parties to this suit, and involving other and wholly different and distinct issues and subject matter than are involved in this suit; and that the same is impertinent.

TWENTY-SECOND EXCEPTION.

Complainant's Exhibit 53:

For that said Exhibit 53 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it has not been properly authenticated or identified and no proof has been offered herein that it was ever made; that it is not shown to be a copy of and is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents, or the loss, or of any proper or sufficient search therefor by complainant, if lost, of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause. That said Exhibit 53 purports to be a stipulation entered

into in another and different suit and between other and different parties than the parties to this suit, and involving other and wholly different and distinct issues and subject matter than are involved in this suit; that said other and different suit appears to have been between John Nightengale and Simon C. Elliott as Plaintiffs and against the Oregon Central Railroad Company and the Oregon and California Railroad Company, as defendants, and said stipulation purports to have been made and entered into between the counsel representing said parties respectively to said suit and for the purpose of dispensing therein with certain matters of proof for the purposes of a trial of said suit, and that said stipulation was not made by or on behalf of this defendant or her predecessors or privies in interest or title, or their agents, attorneys or representatives; that the same is impertinent.

TWENTY-THIRD EXCEPTION.

Complainant's Exhibit 54:

For that said Exhibit 54 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it has not been properly authenticated or identified and no proof has been offered herein that it was ever made; that it is not shown to be a copy of and is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing,

document, or transaction alleged or pleaded in said bill or in issue in this cause, because there is no evidence in this cause of the existence, execution delivery, contents, or the loss, or of any proper, sufficient search by complainant therefor, if lost, of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause; and that the same is impertinent. That said Exhibit 54 purports to be the amended complaint in another and different suit between other different parties than the parties to this suit, and to which neither this defendant nor her predecessors or privies in interest or title were parties, and involving other and wholly different and distinct causes of action, issues and subject matter than are involved in this suit, and that the same is hearsay and impertinent.

TWENTY-FOURTH EXCEPTION.

Complainant's Exhibit 55:

For that said Exhibit 55 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it purports to be a document made by and in behalf of complainant and for its own use and benefit and self serving, and does not appear to have been made with the Knowledge, assent or acquiescence of this defendant or of her predecessors or privies in interest or title, and that it is hearsay and impertinent.

TWENTY-FIFTH EXCEPTION.

Complainant's Exhibit 56:

For that said Exhibit 56 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it purports to be a document made by and in

behalf of complainant for its own use and benefit and self serving, and does not appear to have been made by or with the knowledge, assent or acquiescence of this defendant, or of her predecessors or privies in interest or title, and the same is hearsay and impertinent.

TWENTY-SIXTH EXCEPTION.

Complainant's Exhibit 57:

For that said Exhibit 57 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it purports to be a document made by and in behalf of complainant and for its own use and benefit and is self serving, and was not made with the knowledge, assent or acquiescence of the defendant or her predecessors or privies in interest or title, and that the same is hearsay.

TWENTY-SEVENTH EXCEPTION.

Complainant's Exhibit 58:

For that said Exhibit 58 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it purports to be a document made by and in behalf of complainant and self serving, and is not shown to have been made with the knowledge, assent or acquiescence of this defendant or of her predecessors or privies in interest or title, and that the same is hearsay.

TWENTY-EIGHTH EXCEPTION.

Complainant's Exhibit 60:

For that said Exhibit 60 and all and each and every part thereof is incompetent, irrelevant and immater-

ial; and defendant makes the same objections and exceptions thereto and upon the same grounds and for the same reasons as have been herein above made and stated in reference to complainants exhibit 14, said exhibit 60 purporting to be pages 66, 67 and 68 of said exhibit 14, which is alleged to be the minute book of the Oregon & California Railroad, the complainant herein.

TWENTY-NINTH EXCEPTION.

Complainant's Exhibit 61:

For that said Exhibit 61 and all and each and every part thereof is incompetent, irrelevant and immaterial; that it has not been properly authenticated or identified and no proof has offered herein that it was ever made; that it is not shown to be a copy of and is not the best evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in complainant's bill of complaint herein, or in issue in this cause, and no foundation has been laid by any evidence in this cause therefor as secondary evidence of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill, or in issue in this cause, because there is no evidence in this cause of the existence, execution, delivery, contents or the loss, or of any proper or sufficient search therefor, if lost, of any deed, agreement to convey, writing, document or transaction alleged or pleaded in said bill or in issue in this cause; and that the same is impertinent. That said Exhibit 61 purports to be an answer in another and different suit

between other and different parties than the parties to this suit, and to which neither this defendant nor her predecessors or privies in interest or title were parties, and involving other and wholly different and distinct causes of action, issues and subject matter than are involved in this suit, and that said exhibit purports to be a statement of matters and things made by and on behalf of the complainant here in, which was one of the defendants in said other and different suit in which said exhibit is an answer, and is self serving and hearsay, and it does not appear that said exhibit was made by or on behalf of this defendant or with her knowledge, assent or acquiescence, or by or on behalf of her predecessors or privies in interest or title or with their or any of their knowledge, assent or acquiescence, and that the same is hearsay.

Dated November 13, 1911.

Respectfully submitted,

HENRY CONLIN and

H. W. HOGUE,

Counsel for Defendant.

[Endorsed]: Exceptions to Depositions and Evidence. Filed Dec. 18, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on Tuesday, the 12 day of March, 1912, the same being the 8 Judicial day of the Regular March, 1912, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Minutes of Trial—Final Hearing.]

*In the District Court of the United States for the
District of Oregon.*

No. 3745

March 12, 1912

THE OREGON & CALIFORNIA RAILROAD
CO.,

vs.

MARIA de GRUBISSICH,

This cause came on regularly for trial at this time for final hearing; Mr. W. D. Fenton and Mr. E. P. Dobson appearing for complainant and Mr. H. Conlin and H. W. Hogue appearing for defendant; and thereupon Defendant moves this cause and the action entitled Maria de Grubissich vs. Oregon & California Railway Company be consolidated, which said motion is Ordered submitted and by the Court taken under advisement, and thereupon evidence heretofore taken was submitted, and thereupon after argument of counsel for respective parties cause ordered submitted and thereupon it is Ordered that complainant have 20 days within which to file and serve its brief, that defendant have 20 days from date of service of complainant's brief to serve and file her brief and that complainant have 10 days from the date of service of defendant's brief to serve and file its reply brief herein.

And afterwards, to wit, on the 20 day of May, 1912, there was duly filed in said Court, an Opinion, in words and figures as follows to wit:

[Opinion of the Court.]

*In the District Court of the United States for the
District of Oregon.*

OREGON & CALIFORNIA RAILROAD CO.,

Complainant,

vs.

MARIE D'GRUBISSICH,

Defendant.

W. D. FENTON, Attorney for Complainant.

HENRY CONLIN and H. W. HOGUE, Attorneys
for Defendant.

R. S. BEAN, District Judge.

The object of this suit is to enjoin the prosecution of an action at law in this court by the defendant against the complainant railroad company to recover possession of certain land near the City of Portland, and for a decree adjudging the complainant to be the owner thereof. The land was filed on in 1867 or 1868 by one Gridley and one Showers. In November, 1868, the co-partnership of Ben Holladay & Company (consisting of Holladay, Elliott and Emmett), purchased the timber growing thereon for use in the performance of a contract which they had for the construction of the Oregon Central Railroad from Portland south, and it was removed by them prior to December 24, 1869. On May 4 and October 5, 1869, the land was deeded to "Ben Holladay & Co." as grantee by the owner, and the title now so stands of record except insofar as it is affected by the death of Holladay in 1887, and the subsequent administration and settlement of

his estate. It has never been in the actual possession or occupancy of any person since Holladay & Company ceased logging operations thereon in 1869. It has never been cleared or cultivated but is now practically in the same condition as it then was. It was not enclosed until March, 1905, when a fence was built around it by the complainant or by its direction for the purpose of initiating title by adverse possession. It was not listed for assessment for taxation from 1869 to 1872. From 1873 to 1902 it was listed or included in the corporation property of the complainant company, except in the year 1880, when it was assessed to Ben Holladay. From 1902 to 1910 it has been assessed in the name of and as the property of Ben Holladay & Co. The complainant corporation has, however, paid the taxes thereon each year since 1873. Its agents have visited the property from time to time for the purpose of inspecting it and it has sold some cord-wood and gravel therefrom, but it has never occupied or used the property in any other way. The defendant is one of the heirs of Ben Holladay and asserts title as such while the complainant claims to be the equitable owner of the **property under** and by virtue of an alleged unacknowledged, unwitnessed agreement or conveyance of date March 28, 1870, by which the individual members of the firm of Ben Holladay & Co. and the firm itself, in consideration of the cancellation by the Oregon Central Railroad Company of their contract for the construction of the road, and the payment to them of the money advanced, expended and incurred under such contract,

conveyed or agreed to convey to the railway company "all machinery, tools, implements, apparatus of every name and description, all livestock, horses, mules, cattle, work oxen, carts, drays, wagons, gearing tackle, and all leases and all property of every name and nature now owned by us, in the possession of Ben Holladay & Co., all of which property being in the State of Oregon, principally in Multnomah and Clackamas Counties, the same being the mills, machinery, tools, implements, apparatus, livestock, horses, mules, cattle, carts, drays, wagons, gearing tackle, railroad ties, iron rail spikes and other railroad materials now and heretofore used by us in the construction of the Oregon Central Railroad Company, it being the intention of this conveyance to transfer to said Oregon Central Railroad Company all property, real and personal of every name and nature now owned or possessed by the undersigned in the State of Oregon."

The complainant insists that the property in controversy belonged to Ben Holladay & Co. at the date of the alleged agreement, and although not described in the instrument was intended to be conveyed thereby.

Both of these positions are controverted by the defendant but it is unnecessary to consider them at this time. The execution and delivery of the instrument itself is challenged. And substantially the only proof offered by the complainant to prove that fact are the minutes of a meeting of the Board of Directors of the

Oregon & California Railroad Company, held on March 28, 1870, which contain a record of the cancellation of the construction contract of Holladay & Co., the agreement between that firm and the corporation in reference thereto, and what purports to be a copy of the alleged agreement, and also certain recitals in an answer of the complainant company filed in a suit brought against it and the Oregon Central Railroad Company by one Nightingale in November, 1869, and which answer purports to have attached as an exhibit a copy of such agreement and purports to be signed by the complainant company by Ben Holladay, President, aided by such inferences and deductions as may be drawn from the fact that the complainant company has claimed to own the property in controversy, paid the taxes, and assumed to exercise a general control over it. But, in my opinion, this evidence is not sufficient to overcome the record legal title. The records and books of a corporation are, of course, evidence for some purposes but they cannot be used for the purpose of disposing of the rights of strangers or even of members or officers of the corporation in their private dealings with it. (6 Thompson on Corporations, Sec. 7740; *Carey v. Williams*, 79 Fed. 906; *Hayden v. Williams*, 96 Fed. 279; *Edwards v. Bates Co.*, 117 Fed. 526-537.) So that the entry in the minutes of the corporation is not evidence of the execution and delivery of the alleged contract as against Ben Holladay or his heirs. Nor is it competent in this case as secondary evidence of a lost instrument. No wit-

ness ever saw the original agreement and there is no direct evidence that such an agreement was ever in the possession of the complainant company or its predecessor in interest, or in fact ever existed. Moreover, even if the complainant company has established by competent evidence the existence and loss of the original sufficient to authorize the admission of secondary evidence of its contents, it offers no evidence to show that the instrument was in fact executed. If it had produced the original agreement it would not have proved itself but it would still be incumbent on the complainant company to prove that it was in fact signed by Holladay or Holladay & Co., (*Carey v. Williams*, *supra*.) Ben Holladay was not a party to the *Nightingale* suit. The answer filed therein was that of the present complainant. The statements which it contained with reference to the alleged agreement were self-serving declarations and ought not to be deemed an admission by Holladay of the execution and delivery of the agreement in question simply because, as president of the complainant company he signed the answer (if he did sign it) on its behalf without some proof that he knew the contents and was familiar with the statements contained in it.

The possession of the property by the complainant has not been such as to give it title by adverse possession. It has not been open, hostile or exclusive for the requisite length of time. The land formed no part of its operating property and has never been used as such. It is unimproved, uncultivated and practi-

cally wild land and from 1905 was not in the actual possession of any one.

There are many other interesting and important questions discussed by counsel but I do not deem it necessary to notice them at length, for, after a careful examination of the entire record, I am satisfied that the complainant has not proved by competent evidence that it is the owner either legally or equitably of the land in controversy and that its bill of complaint must be dismissed.

[Endorsed]: Memo Opinion. Filed May 20, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to-wit, on the 9 day of July, 1912, there was duly filed in said Court, a Decree, in words and figures as follows to-wit:

*In the District Court of the United States for the
District of Oregon.*

[Decree.]

OREGON & CALIFORNIA RAILROAD COM-
PANY, A CORPORATION,

Complainant,

vs.

MARIA DE GRUBISSICH, NEE MARIA DE
POURTALES,

Defendant.

This cause having come on to be heard on the 12th day of March, 1912, upon pleadings and proofs, and Mr. Wm. D. Fenton having been heard on the part of the complainant, and Mr. Henry Conlin on the

part of the defendant, and due deliberation having been had, it is ordered, adjudged and decreed that the said bill of complaint herein be and the same is hereby dismissed, with costs to the defendant to be taxed.

R. S. BEAN,
Judge

Dated July 9th, 1912.

[Endorsed]: Decree. Filed July 9, 1912.

A. M. CANNON,
Clk. U. S. District Court.

And afterwards, to-wit, on the 13 day of Feby., 1912, there was duly filed in said Court, Testimony and Exhibits in words and gures as follows to-wit:

*In the Circuit Court of the United States for the
District of Oregon.*

OREGON.. AND CALIFORNIA RAILROAD
COMPANY,

Complainant,

vs.

MARIA D'GRUBISSICH, NEE MARIA' D'POUR-
TALLUS,

Defendant.

United States of America,
District of Oregon,—ss.

On this 16th day of September, 1911, at the hour of ten o'clock A. M. the parties herein appeared before Geo. A. Brodie, Examiner of the above entitled court, the complainant appearing by Mr. William D. Fenton, one of its attorneys, and the defendant appearing by Messrs. Henry Conlin and H. W. Hogue,

her attorneys, and thereupon by consent of the parties the taking of testimony herein is adjourned until Monday morning, September the 18th, 1911, at the hour of 9:30 o'clock A. M.

Portland, Oregon, September the 18th, 1911, 9:30 A. M., at this time appear the parties herein as before present Geo. A. Brodie, Examiner, the complainant by Mr. William D. Fenton, its attorney, and the defendant by Mr. Henry Conlin and H. W. Hogue, her attorneys, and thereupon the following proceedings are had, to-wit:

The complainant to support the issues in its behalf called as a witness Mr. A. M. Elam of Milton, Umatilla County, Oregon, who, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, age, residence, and occupation.

A. A. M. Elam, residence Milton, Oregon, I am sixty-one years old, and a farmer by occupation.

Q. When did you first settle in East Portland, now Portland, and what was your business at that time, and how long were you here?

A. I came here in 1868, and settled across the river there in East Portland, and I was in the livery business.

Q. What time in 1868?

A. In the Fall of the year, along in October I think.

Q. And how long did you continue in business there?

A. I was in business there for eight years. I was running a livery stable and running a feed stable, and hauling generally around.

Q. You did teaming also?

A. Yes sir.

Q. I now show you what for the purposes of identification may be marked Complainant's Exhibit 1, being a blue print of township 1 south, range 2 east, of the Willamette Meridian, showing in section 29 the east $\frac{1}{2}$ of the southeast $\frac{1}{4}$ and lots 5 and 6 of section 29, township 1 south, range 2 east, and the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 32, township 1 south, range 2 east,—the former being a tract of land called Cash Entry No. 641 of James Grindley, and the latter being Cash Entry No. 693 of Gardner Elliot, or G. Elliot, containing in the two tracts two hundred and twenty-nine acres and a fraction, and upon which Exhibit 1 is traced in red, the boundaires of these tracts, and at the southwest corner of the township is a red line indicating the located line of the Oregon and California Railroad Company, and with the promise that I will show that this is a correct blue print of this township and a correct location of the line of the Oregon and California Railroad Company later on, I will ask you whether or not you recall the firm of Ben Holladay and Company and your employment with that firm in relation to teaming from this land, and when it was, and what you did,—state fully and par-

ticularly.

Counsel for the defendant objects to the question upon the ground that it is incompetent, irrelevant, and immaterial, not the best evidence and no foundation laid and not addressed to any issue in the pleadings, and does not tend to support the cause of suit alleged in the complaint. It is understood and agreed between the parties that this objection of the defendant's counsel shall be considered as applying to all testimony along these lines without repeating the same except where desired by counsel.

A. I was employed there by Ben Holladay and Company to haul ties from the mill up there,—I cannot say for certain whether it was No. 2 or No. 3 mill. There was a mill up there that we hauled ties from down to the railroad. Some of them we scattered along the railroad, and some of them we piled up there.

Q. How far was it that you hauled these ties?

A. Well, I cannot say for certain, but it was something like a mile and a half or two miles, maybe a little further than that, I cannot say.

Q. How long were you employed in hauling these ties, if you remember?

A. No sir, I cannot say, but I was there two or three weeks.

Q. Do you remember what time of the year it was that you did this hauling?

A. Well, it was in 1869, in the winter sometime, or in the Fall. I am pretty certain it was in the win-

ter. It rained like the dickens.

Q. Had the railroad been completed from East Portland to Oregon City, or was it then in process of construction?

A. It was in process of construction.

Q. Had the road been completed along where you hauled the ties?

A. No sir.

Q. What were they doing?

A. They were grading and putting the ties down.

Q. Were they grading and putting the ties down along the track where the road is now located?

A. I cannot say, but I think it is in the same place, but I cannot say for certain about that.

Q. About how far this way from Clackamas station do you say it was where you unloaded the ties?

A. It was on this side of Clackamas Station.

Q. About how far?

A. Well, I cannot say. It was two or three miles somewhere along there.

Q. Now were there other teams hauling with you?

A. Yes.

Q. Can you name any of them?

A. Well, one man was hauling with me by the name of Williams,—Pete Williams.

Q. Do you know where he lives now?

A. I think he is dead.

Q. I now show you what for the purpose of identification may be marked complainant's Exhibit 2, purporting to be a plat of these lands drawn to scale and showing the location of lots 5 and 6 and the east

$\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 29, and showing the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 32, and showing a road on the east marked "Road to Oregon City," and a diagonal road cutting across the southeast corner of this 80 in section 32, and showing the existence at the present time of a road between the Gardner Elliott tract and the Grindley tract on the section line between sections 29 and 32, called "Road to Milwaukee," which is now there,—and I will ask you if you recollect the existence of a road leading across this eighty, and running southwest towards the railroad tract, down which you hauled these ties,—complainant by its counsel promising later on to show that this is a correct plat of the situation as it is at the present time?

A. Well, I cannot say for certain, but there was a road up here this way (the witness points to the diagonal road) right along the east boundary of the eighty, but I cannot say whether it was along that line or not, I do not know.

Q. You cannot say what road you hauled the ties out on?

A. I think we used this diagonal road, the one up here. (showing). This one going south.

Q. I show you on this plat complainant's exhibit 2, what purports to be the location of an old saw mill, and will ask you from your recollection now about where this saw mill was located that you referred to from which you hauled these ties with reference to this road, and with reference to this tract of land?

A. Well, it was quite a ways from this road. I

recollect that we had to go out in through the brush and cut out roads there and there was quite a ways that we had to come through in here to get to this road. (showing).

Q. It was on this tract of land that this saw mill was located?

A. It must have been right on this tract of land.

Q. On the eighty?

A. Yes. I cannot say for certain, but there was a saw mill there where we hauled the ties from.

Q. Now as to the timber, Mr. Elam,—what was the general character of the timber on this 229 acres,—what kind of timber was it? And where were they getting the logs from from which they made these ties?

Counsel for defendant objects to this question as leading and as asking the witness to state with reference to logs, which is something that he is not qualified to state.

A. My recollection is that it was pretty fair timber. The timber was hauled from right around close to the mill. It was not very far. I cannot say just how far. I had nothing to do with hauling the logs in from the mill. I hauled the ties principally, that was my work. There was other teams hauling the logs.

Q. To what extent, if you know, or can you recollect, was this timber cut down and into logs for sawing during the time you were hauling or before, or after, if you know.

Counsel for defendant objects to this question as

leading and because it asks for an answer to a matter which the witness has not shown himself qualified to answer.

A. Well, there was quite a lot of timber there. It seems to me now as though there was a great deal of timber there. They did not have to go very far to get the timber.

Q. When do you recollect having seen this land after you ceased to work there?

A. Well, I never saw it after that. I passed along there on the railroad and used to think about how I used to work out there.

Q. But you have not been on the land since after you quit work?

A. No, I never was over the land after that.

Q. How many teams besides your own were engaged there during the two weeks that you were hauling ties?

A. I cannot say. There was quite a number of teams there,—must have been ten or fifteen teams.

Q. How many loads of ties did you haul per day?

A. I do not remember about that. But it was very muddy, and we could not haul very big loads.

Q. Did you know, or were you acquainted with Gardner Elliott, or James Grindley, the men who owned this land at one time?

A. No.

Q. The men who took it up?

A. No sir.

Q. Who employed you to do this work?

A. The foreman there. He was a large fellow. I knew him very well. We used to meet in the Masonic Lodge in Portland. I expect you recollect his name (referring to a gentleman in the room), we were in the lodge there together, but I cannot recollect his name now.

Q. Do you recollect whether it was George Weidler?

A. I cannot say whether that was the name or not. I do not recollect.

Q. Was George Weidler purchasing agent of Ben Holladay and Company at that time?

A. I heard his name spoken of but I cannot say whether that is the name or not. I do not think it is the name. The man that employed me was foreman of the mill there.

Q. Do you recall his name as being that of Mr. Davis?

A. No, I do not think so. I cannot say for certain.

Q. You probably would not recollect his name if you heard it?

A. No. But I recollect the man very well. We used to attend lodge together.

Q. Do you know Mr. Elam about how long Ben Holladay and Company continued to deliver ties from these lands after you quit hauling,—have you any knowledge on that subject?

A. No sir.

Q. These two tracts of land are situated in Clack-

amas County, are they not

A. Yes. I think the mill there was in Clackamas County.

Mr. FENTON: I want to add to my offer as to the description of the land that it was in Clackamas County, Oregon.

Cross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. Mr. Elam, you say you were engaged there about three weeks?

A. Somewhere around there,—I cannot say exactly.

Q. Hauling ties?

A. Yes, hauling ties.

Q. You did not, I suppose, make any examination of this land that you were hauling ties from to ascertain where it was with reference to government surveys?

Q. Or subdivision?

A. No.

A. No sir.

Q. And at that time you did not know whether you were on the land which Mr. Fenton has described in that plat or on some other tract?

A. No sir. I know that I was on the land where this mill was located. It was right around there.

Q. There was land there and there was a saw mill and there was timber?

A. Yes.

Q. But where with reference to any public survey or subdivision that mill was located you do not know?

A. No.

Q. And is so far as the timber which was cut into ties there is concerned you do not know whether that timber was taken entirely from the land described by Mr. Fenton in that plat or from surrounding land or adjacent land?

A. No,—only I know it was not very far from around that mill. I cannot say where the mill was only by that plat there.

Q. This hauling you say was done in the fall of 1869?

A. It was in the fall of 1869 or winter of 1869. I cannot say for certain what time it was, but I think it was in the fall or winter.

Q. The railroad was then located and under construction?

A. It was under construction.

Q. It was in the same place that it is now?

A. I think so.

Q. The route of the road has not been since changed?

A. Not that I know of.

Q. You have been over the road since that time, have you not?

A. Yes, I have been over the road since that time and of course I always thought it was in the same location.

Q. And this land is a mile and a half or two miles from the railroad?

A. A mile and a half or two miles, somewhere around there.

Redirect Examination.

(Questions by Mr. W. D. FENTON.)

Q. Speaking of distance, you do not know the distance that you hauled the ties from the mill?

A. No,—but I know that there was some that was closer than others. It took longer to make some trips than it did others.

Q. That is, some parts of the track to which you made deliveries was nearer than other parts?

A. Yes.

Recross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. Mr. Elam, was the timber practically all cut off at the time you were there?

A. No.

Further Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. Do you think you could identify the land and the location of this old mill as it then was if you went upon the premises?

A. I have my doubts about it very much.

Q. I wish you would state what kind of a mill this was as you recollect it?

A. Well it was I believe what they call a portable mill. There was just sheds put up there. There was no mill put up only just a shed put over the machinery, and they had a cook house, and they ate in this cook house and they had stables put up, and they kept there horses in the stable and the mill was just a shed.

Q. Who operated the mill, and these cook houses and these stables?

Q. Well, I cannot say.

Q. To whom did they belong?

A. Well, to the Holladay crowd is all that I can say.

Q. Ben Holladay and Company?

A. Yes.

Q. That is the way it was known?

A. Yes, that is the way it was known.

Further Cross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. But you have no actual knowledge as to whether it belonged to Ben Holladay or not?

A. Nothing only they all called it Ben Holladay's mill.

Q. You do not know whether it was Ben Holladay's or any one else's?

A. No sir. It was known as Ben Holladay's road and Ben Holladay's mill, that is all that I can say.

Further Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. You know who hired you?

A. I know it was Holladay and Company that hired me,—that is the foreman of the company hired me, but as to the form of the checks I cannot say whether it was Holladay and Company that paid them or not, but I got my money all the same.

(Witness excused.)

Mrs. MARIA A. SMITH is called as a witness on

behalf of the complainants, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, residence, and occupation.

A. My name is Maria A. Smith, I am sixty-nine years old, my residence is Portland, Oregon.

Q. How long have you lived in Portland, Mrs. Smith?

A. Well, since 1862, in the fall. Not continuously, but this has been my home.

Q. Were you here in Portland at the time the railroad known as the Oregon Central, East Side, was built from East Portland to Oregon City, and on towards Salem?

A. Yes sir, I recollect that.

Q. In 1868?

A. Yes.

Q. Do you recollect the circumstance of the first shovel full of earth being thrown in Tibbett's Addition to East Portland on the 16th of April, 1869?

A. Yes.

Q. Were you present and heard Senator Mitchell make a speech?

A. I do not recollect about the speaking, but I remember that I was there.

Q. Where was that with reference to the present City of Portland?

A. I cannot tell you.

Q. It was on the East Side of the river?

A. Yes, it was on the east side of the river, but I do not recollect exactly where.

Q. Now, have you any individual recollection of when the road was completed to Oregon City?

A. No.

Q. Do you recall the coming of Ben Holladay and Company in September, 1868?

A. I cannot remember that.

Q. You were acquainted with Ben Holladay?

A. Yes.

Q. Do you recall about when you first knew him?

A. No, I cannot tell exactly the date.

Q. Was it about 1870, do you think, or along there?

A. Yes, I guess it was before that.

Q. And now did you know him up to the time of his death?

A. Yes.

Q. Do you recall, Mrs. Smith, when he died?

A. Do you mean the date?

Q. Yes.

A. Yes, that can be found from the records, if my word would not be taken, but it was, I think, July the 8th, 1887.

Q. Where did he die, in Portland?

A. In St. Vincent's Hospital, in this city.

Q. Now, at the time of his death whom did he leave as his widow and heirs, do you know?

A. He left his wife.

Q. What was her name?

A. Mrs. Holladay,—Esther Holladay.

Q. Esther Holladay was a sister of your?

A. Yes sir.

Q. What children were born to that marriage?

A. Linda and Ben.

It is understood that all testimony of this witness and other witnesses is taken subject to the objection of defendant's counsel, and that the same is incompetent, irrelevant, and immaterial, and not the best evidence, and no foundation laid that such objection will be considered to be made without repetition.

Q. Can you give the name of these two children,—their correct names in full?

A. Linda Holladay, afterwards Linda Holladay Dorcy, and Ben Campbell Holladay.

Q. They are both living are they?

A. Yes sir.

Q. Now what other heirs, if any, did he have besides these two that you know of?

A. He had grandchildren.

Q. Can you give their names?

A. One was Ben Calvert Holladay.

Q. Where did he live?

A. He was in San Francisco.

Q. Who was his mother?

A. Mrs. Ben Holladay Junior.

Q. Then this Ben Calvert Holladay was a grandson of Ben Holladay?

A. Yes.

Q. And his father's name was Ben Holladay, Jr.?

A. Yes, Ben Holladay, Jr.

Q. Now when did Ben Holladay Jr. die,—before or after his father?

A. He died before. All his children by his first wife died before he did.

Q. This Ben Holladay, Jr. left a son called Ben Calvert Holladay?

A. Yes.

Q. And both Ben Holladay, Jr., and Ben Calvert Holladay are dead?

A. Yes.

Q. And whom did they leave as sole heir, do you know?

A. No one.

Q. Is Mrs. Irving living?

A. Yes.

Q. Where does she reside?

A. San Francisco, California.

Q. Is not she an heir of Ben Calvert Holladay?

A. I suppose so.

Q. Now what other grandchildren if any did Ben Holladay leave surviving him?

A. His two daughters.

Q. Can you name them?

A. There was Polly and Jenny. Jenny had a daughter and Polly had a son called Paul DeBrussier.

Q. Where does this Paul DeBrussier live if you know?

A. He is dead.

Q. Did he leave any descendants?

A. No, he was an only child.

Q. What was his mother's name?

A. They called her Polly.

Q. She was a daughter of Ben Holladay?

A. Yes. She died,—they all died between 1872 and 1878.

Q. They all died before Ben Holladay, the elder?

A. His children did, but this grandson, I do not recollect whether he died before or after, I cannot say positively.

Q. But all of Ben Holladay's children except those by Esther Holladay, died before Ben Holladay died?

A. I would not like to say. That must be a matter of record now,—they were buried at Ophir Farm, White Plains, New York.

Q. Now what other granddaughter or grandchildren did he leave?

A. Jenny had a daughter.

Q. Jenny Holladay?

A. Yes.

Q. What was her married name, if you remember?

A. Jenny d'Pourtalles.

Q. She was the wife of Arthur d'Pourtalles?

A. Yes.

Q. What was this daughter's name?

A. Marie d'Pourtalles.

Q. She is the defendant in this case, Marie d'Grubissich?

A. Well, they call her Marie, which is the same as Maria.

Q. Where does she reside now?

A. I do not know.

Q. How long since she was here?

A. I cannot tell you the year. She was here when she was a little baby. She was not born here.

Q. Has she been here since 1875?

A. I do not know, I cannot tell you?

Q. Has she been here since the death of her grandfather? Ben Holladay?

A. No, I think not. No, because her mother died before, and she was sent back to her grandmother.

Q. You say that her mother died before her father?

A. Yes.

Q. And did the grandchild Marie d'Pourtalles return to Portland after the death of her mother?

A. If she did I do not know it.

Q. As a matter of fact, is it not true Mrs. Smith that this granddaughter, Maria, was born in France?

A. No.

Q. Where was she born?

A. I cannot say, but I know she was not born in France.

Q. She was born in Europe somewhere?

A. I cannot be sure, but I think so.

Q. You think so?

A. Yes, but I do not know.

Q. Since her birth, is it not true that she never

has returned to Portland,—do you know of her having been in Portland?

A. Yes, because I saw her.

Q. How old was she when she was here?

A. I do not recollect, but I know that she was here.

Q. About how old was she?

A. I do not recollect,—she was a young child.

Q. A girl.

A. Yes, a baby. She wore short clothes, but she could walk.

Q. Can you tell us what year she was born in, about?

A. No, I cannot say that without looking it up.

Q. Well, what is your best recollection as to how old she was?

A. No, I cannot say anything about that.

Q. She is a woman over fifty years of age now, is not she?

A. Well, I would have to count that up, I would not like to say. It does not sound as if she was that old, though she might be.

Q. Now Ben Holladay, or the grandfather, died July 7th, 1887,—can you say, Mrs. Smith, whether this girl has been in Portland since the death of her grandfather, or was it not quite a while before that that she was last here?

A. Well, of course it was before he died.

Q. So far as you know, it was before the death of her grandfather?

A. Yes.

Q. About how long before the death of Mr. Holladay?

A. I would have to count it up, I cannot tell you.

Q. Did you know the executors of the estate of Ben Holladay,—Joseph Holladay and Major Haynes, and Samuel L. Barlow, and William Barlow?

A. Not personally, I knew of them.

Q. Did you know Joseph Holladay?

A. Yes.

Q. What relation was he to Ben Holladay?

A. He was a brother.

Q. Is Joseph Holladay living or dead?

A. He is dead.

Q. Do you know where Joseph Holladay resided at the time of his brother's death?

A. I think in Portland.

Q. Do you know whether or not he acted as executor of Ben Holladay's estate?

A. No.

Q. Do you know whether your sister, Esther Holladay, acted as executrix of Ben Holladay's estate?

A. No, I do not.

Q. You do not remember that?

A. No.

Q. When, if you recollect, did Esther Holladay die,—about when?

A. I think the year after her husband.

Q. At Portland?

A. Yes.

No Cross Examination.

(Witness excused.)

SAMUEL E. WISHARD is called as a witness for the complainant and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, age, residence, and occupation.

A. My name is Samuel E. Wishard, I am seventy-six years old, I reside at 474 E. Stark Street, and I am not doing anything. I have retired.

Q. How long have you lived in Portland and East Portland, Mr. Wishard, and what was your business when you were actively engaged in business?

A. I came down to Portland in the latter part of April, 1868, and went to work for the Oregon and California Railroad out here in Southeast Portland at the railroad shop.

Q. When you say the Oregon and California Railroad Company, you mean the road with which Ben Holladay was connected?

A. Well, it was called the Oregon and California Railroad. I was hired by Mr. Elliott.

Q. By Samuel G. Elliott?

A. Yes, if that was the Oregon Central Railroad Company.

Q. Now the fact is that the Oregon Central Railroad Company was incorporated April 22, 1867, and

the first twenty miles of road from Portland to Parrott Creek was completed somewhere about December 24, 1869, and was built under the name of the Oregon Central Railroad Company, and on March the 7th, 1870, the Oregon and California Railroad Company was incorporated, and succeeded to the other road,—in order to locate the time of your employment I will ask whether you can fix the time when you went to work for the railroad company?

A. Well, Ben Holladay paid me. I was put in as foreman.

Q. What did you do,—where did you work?

A. Well, we worked out there at the present shop. They had commenced building a saw mill there at that time when I arrived, but the first work I done when I went there was to build a carriage for that mill.

Q. That is to say, the first work that you did was done under the supervision of Simon G. Elliott, at the site of the present car shops?

A. For mill No. 1.

Q. The shops are on the location of the mill that you call mill No. 1?

A. Yes.

Q. That was on the ground of the present car shops in East Portland?

A. Yes.

Q. What time of the year was this?

A. That was in 1868, the latter part of April.

Q. Were you present at the time that the work

started,—the throwing of the first shovel full of earth in Tibbett's Addition to East Portland?

A. Yes.

Q. What other mills, if any, were constructed by Ben Holladay and Company in which Mr. Elliott was a partner, which were used in sawing or manufacturing railroad materials to be used in the construction of this first twenty miles of railroad if you know?

A. The next mill work,—I was employed generally in the shops, and we built cars, and anything else that had to be used in the railroad, but during that time we started up Mill No. 2, and we done some work for that mill. In fact, we done everything we could in the shop to help the road along.

Q. Where was this mill No. 2 located?

A. It was about a mile or a mile and a half above Milwaukie, on the south side of the road.

Q. Was that mill No. 2 across the low ground south of the track?

A. Yes, just across a low piece of ground.

Q. And on the west and south side of the railroad track as the road now is?

A. Yes.

Q. How far was that from the track?

A. It might have been half a mile.

Q. How far from the present city of Milwaukie?

A. It would be probably two miles.

Q. Now what did you do with reference to mill No. 2?

A. We built a carriage also for that mill, and we went up to the mill and put it in position.

Q. What other mills, if any, did Ben Holladay have in operation at that time?

A. Well, the next mill was called mill No. 3, but I never was up to that mill.

Q. About where was that located?

A. My inclination is that it was located north of the track.

Q. About how far from the railroad track?

A. I do not know just how far, but my inclination is that it was above the track.

Q. I will ask you if you did not, at my request on Saturday go to the tract of land described as the East $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 29 and lots 5 and 6 of section 29, township 1 south, range 2 east of the Willamette Meridian in Clackamas County Oregon, being cash entry No. 641 of James Grindley and to the tract of land described as the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 32, township 1 south, range 2 east of the Willamette Meridian, Clackamas County, Oregon, know as cash entry No. 693 of Gardner Elliott, and lying on the west side of the road,—the present road to Oregon City, and east of the Hector Campbell donation land claim and of the Drew Hathaway donation land claim, the boundaries of which are shown on the plat, plaintiff's exhibit 1 and also on complainant's exhibit 2.

Counsel for defendant objects to the form of the question as leading and based upon a hypothetical

state of facts as incompetent, irrelevant, and immaterial.

A. Yes, I went up there.

Q. Now I show you these blue prints and particularly exhibit 2 and will ask you if you examined the premises for the purpose of ascertaining the location of an old saw mill on these premises, and if so, with what results?

A. Well, I went to this old location where this mill was supposed to be, and it had every indication of being an old saw mill. There was indications there of a saw mill,—there was no question about that.

Q. What were those indications, Mr. Wishard?

A. Well, there were timbers for the foundation, and then there were indications of cross timbers, and an old log roll way, and on the extreme west there was indications of a log way that was used to roll logs down into the mill.

Q. What indication of excavation for a foundation was there?

A. There were trenches dug for mud hills like they would put in for a portable mill.

Q. With reference to the southeast corner of this eighty as shown on exhibit 2, and with reference to this diagonal road that is shown on this exhibit 2,—where did you enter the tract, and how did you get in there?

A. Well, I came down this way (pointing to the diagonal road).

Q. How did you get in there?

A. Went in a gate, there is an old road that leads down here. (showing.)

Q. I call your attention to the mark indicating the location of an old saw mill on this exhibit 2 and will ask you to state whether or not that indicates the location about where you found the remains of this old saw mill?

Counsel for defendant objects to the form of the question as leading.

A. Well, this would indicate the place. We went down this way (showing) and struck this old road, and right at this place will be about my idea of it (showing.)

Q. Now, I will ask you to state, Mr. Wishard, what was the appearances there as to the kind of timber that had been cut off of this 229 acres of land, and what kind of trees they were, and what indications were there as to the length of time that they had been cut?

Counsel for defendant objects to the question on the ground that the witness has not shown himself qualified to answer the question.

A. I could not say as to the length of time, but the indications were that the logs were cut for lumber,—they were cut pretty high. The mill was located in a kind of low place, and around on each side all the stumps seemed to be high,—they had been cut pretty high up, and it has every indication of a logged-off country.

Q. What appearance, if any, had these stumps as

to the period of time that had elapsed since they were logged off?

A. I could not tell, it might have been a good while.

Q. What was the fact as to whether or not these lands were burned over,—whether the stumps were all burned over?

A. Well, they had indications of having been burned over, though there is considerable young growth growing up, but I presume it had been burned over.

Q. What was the appearance of the remains of this old mill as to having passed through a fire or not?

A. It had every indication that they had been burned, the fire had been right over the place, and there was only the remains of logs in some places, and in this foundation the logs were all burned, and in a good many places, the old rotten log was there yet.

Q. Now did you know of the firm of Ben Holladay and Company that constructed this first twenty miles of road?

A. That was my understanding that Ben Holladay and Company constructed the road. The first one there was S. G. Elliott. Afterwards Mr. Holladay came in.

Q. Now what were these mills engaged in doing,—what kind of work did they do?

A. They cut ties principally, and they furnished bridge timbers, and for anything that they wanted lumber for.

Q. Where were the ties and material for bridges and so forth used?

A. They were used on the Oregon and California Railroad.

Q. In the construction of what part of the road were they used in 1868 and 1869?

A. Well, for bridges and ties.

Q. From what point to what point?

A. Well, along the road.

Q. Do you remember when they completed the first twenty miles of the road to Parrott Creek?

A. Yes.

Q. When?

A. That was completed the day before Christmas, 1869.

Q. How do you come to recollect the date?

A. Because we had to work night and day for about a week to get the road ready, and the directors went over the road the 25th of December.

Q. Now what is the fact as to whether or not the ties and bridge timbers and material that these mills cut were used in the construction of this twenty miles from the time they first began to the time of the completion of the work?

A. I understand it was.

Q. Where was mill No. 4?

A. Mill No. 4 was at Milwaukie station just north of the road.

Q. How far from the track?

A. Might have been two hundred yards, and it

might have been three hundred.

Q. How did you come to remember these mills by number?

A. Well, they were always called by number.

Q. Now did, or did not Ben Holladay and Company operate all of these mills?

A. That is my understanding.

Q. Do you remember James Grindley?

A. I knew James Grindley.

Q. Do you remember Gardner Elliott?

A. Yes.

Q. Do you remember whether or not they worked at these saw mills, or for Ben Holladay and Company in 1868 and 1869?

A. I was working in the shop, and the first man Grindley worked at the shop but he was an engineer, but part of the time he was at these mills. Gardner Elliott was a kind of road carpenter, and he worked, I believe, on the road.

Q. What relation do you know, or do you recollect, that Gardner Elliott was to Simon G. Elliott?

A. Brother.

Q. Do you remember anything about who Mr. S. G. Elliott was working for in the early days before Holladay came?

A. Yes, I remember S. G. Elliott was in charge when I came there.

Q. Do you know or do you recollect whether he was working under the name of A. J. Cook and Company?

A. I knew of A. J. Cook and Company, yes.

Q. I notice in Exhibit "D" made a part of the deposition of Simon G. Elliott, taken May 29th, 1871, in the suit of Ben Holladay and C. Temple Emmet vs. Simon G. Elliott et al in the Circuit Court of the State of Oregon for the County of Multnomah before J. C. Moreland, referee, which cause was afterwards removed by a change of venue to the Circuit Court of the State of Oregon for Marion County, and later appealed to the Supreme Court, and decided in the eighth Oregon page.....which exhibit "D" is attached to and made a part of this deposition in which there is a statement of account of S. G. Elliott with A. J. Cook and Company and contains this entry under date of August, 1868 "Saw mill pay roll July, S. E. Wishard \$89.25",—"Wishard \$50.00", and will ask you whether you are the same person referred to in this exhibit "D"?

Mr. Fenton, complainant's counsel offers and will produce competent evidence of this deposition in this suit for the purpose of identifying this exhibit "D" in this case and will offer the same or such parts thereof as may be considered material by him.

Counsel for defendant objects to this question on the ground that it is incompetent, irrelevant, and immaterial, and leading and not the best evidence, and for the reason that it is undertaken to be used to inform the witness with reference to matters contained in a deposition in a suit between other parties not in this case.

A. Yes.

Q. I notice in this exhibit "D" attached to and

made a part of the deposition of Simon G. Elliott in this case referred to, this entry: "April 9th, 1868, Mr. Grindley, \$15.00," and this entry under date of February 26th: "Grindley and family "\$80.00," and this entry "February 26th—Grindley \$50.00", and this entry under date of July 20th, 1868, "saw mill pay roll, Grindley \$36.00," "Saw mill pay roll, Grindley \$35.00," and under date of August, 1868, this entry, "Saw mill pay roll, Grindley \$19.00," and under date of August, 1868—"July pay roll, Grindley, \$81.50"—what is your recollection as to what Grindley this was that is referred to in this exhibit "D"?

Counsel for defendant objects to the question upon the ground that it is incompetent, irrelevant, and immaterial, and leading, and not the best evidence, and for the reason that it is undertaken to be used to inform the witness with reference to matters contained in a deposition in a suit between other parties not in this case.

A. I do not know of any other Grindley but James Grindley who was an engineer and who worked at everything around.

Q. State to the court whether or not he is the same person that is referred to as having taken cash entry No. 641?—J. Grindley, referred to complainant's exhibit 1.

A. I cannot answer that question because I do not know.

Q. Do you know of any other James Grindley than this one?

A. No, I never knew of any other.

Q. I call your attention to this exhibit "D" and to the following entries appearing thereon under date of July 20th, 1868, "Saw mill pay roll, G. Elliott, \$10.00," under date of August, 1868, "Saw mill pay roll, G. Elliott, \$190.00," under date of August, 1868, "Saw mill pay roll, July, G. Elliott, \$192.31," and will ask you what Elliott or what G. Elliott, if you know that these items refer to?

Counsel for defendant objects to this question on the ground that it is incompetent, irrelevant and immaterial, and leading, and not the best evidence, and for the reason that it is an attempt to inform the witness with reference to matters contained in a deposition in a suit between other parties not in this case.

A. Gardner Elliott.

Q. I noticed an entry, "Saw mill pay roll August Elliott \$200.00,—August, 1868, in this same exhibit "D", and will ask you what Elliott that has reference to, if you know.

Counsel for defendant objects to this question on the ground that it is incompetent, irrelevant, and immaterial, and leading, and not the best evidence, and for the reason, that it is an attempt to inform the witness with reference to matters contained in a deposition in a suit between other parties not in this case.

A. Well, that referred to Gardner Elliott.

Q. Did you know of any other Gardner Elliott that worked there during the time referred to in 1868?

A. No other.

Q. Do you know, Mr. Wishard, whether there was any other G. Elliott, or Gardner Elliott in this section

or in this community?

A. I do not know of any other.

Q. I notice in complainant's exhibit 1 that G. Elliott took cash entry No. 693 being the eighty acres shown in complainant's exhibit 2 upon the site of which you found the remains of this old saw mill,—do you know whether or not, or what the fact is, as to whether or not this G. Elliott or Gardner Elliott is the same person that was employed at this saw mill?

A. No, I do not.

Q. Did you ever know of any other Gardner Elliott taking land out there?

A. No.

Q. What is the fact, if you know, Mr. Wishard, as to your continuously residing in East Portland, and in Portland since that time, and if so, in what capacity have you been employed?

A. Well, from 1868 to 1878 I worked on the railroad all the time continuously.

Q. For what time?

A. About ten years.

Q. In what capacity were you employed?

A. Well, the first two years I did general work under a foreman, and the last eight years I acted as foreman of the car shops.

Q. Where are you residing now?

A. In East Portland, 474 East Stark Street.

Q. I understand that you are not actively engaged in business now?

A. No.

Q. Are you connected in any way with the Ore-

gon and California Railroad Company, or any of its offices?

A. No sir.

Q. How did you come to be called as a witness here,—how did you first find out that you were going to be a witness?

A. I was asked by somebody.

Q. Do you recall that Mr. Fenton called upon you on Saturday morning last, at your residence?

A. Yes.

Q. Was that the first time that you had been spoken to about this matter?

A. Yes.

Q. I will ask you what the fact is as to whether you were shown the boundaries and fences around this 229 acres and the corners as indicated by iron pins on Saturday last?

A. Yes, I remember, we went out there.

Q. Just tell the court what you saw that marked the corners as shown on complainant's exhibit 2,—what kind of pins were there?

A. Well, I saw something that indicated a survey.

Q. What did you notice, if anything, about any evidence of the remains of an old fence on the north side of this tract of land and on the south side?

A. Yes, there was an old fence.

Q. What kind of a fence on the south as to age or the indications of fence posts?

A. I did not take particular notice as to the age, but there was an old fence along there.

Q. The present fence that encloses these premises,
—what kind of a fence is that?

A. I think it was a kind of barbed wire fence.

Q. A wire fence?

A. Yes.

Cross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. You say you noticed iron pins at the corners?

A. Yes.

Q. What do you mean when you say “iron pins”,
—iron gas pipe?

A. Well, something set down there to indicate the
corner.

Q. Did you notice whether it was iron gas pipe?

A. No, I did not.

Q. Iron, was it?

A. I cannot tell, I think so.

Q. Do you know whether it was iron or wood?

A. No, I cannot swear whether it was iron or
wood.

Q. What do you mean by a portable mill, or a
portable saw mill?

A. Well, one that is put down without hewing.
They hew one side of the sill and put it down on the
ground.

Q. You mean a mill that can be moved?

A. A mill that could be taken down and moved
somewhere else, that is called a portable mill, it just
had a shed and roof over it.

Redirect Examination.

(Questions by Mr. W. D. FENTON.)

Q. What is your recollection, Mr. Wishard, as to what became of these mills,—all of them?

A. I know nothing about what became of them. I do not know only the mill at the shop where I was working. That was torn down and the machine shop put in its place.

Q. I will ask you if you know whether these mills were removed from the places where they were originally built or placed?

A. No. I do not know. I do not know whether they were moved to any other place or not. I do not know where they went.

Q. Your employment was at the car shops as foreman for eight years?

A. Yes.

Q. After the first few years?

A. Yes.

Recross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. At the time you visited this mill that you spoke of as No. 3, did you make any examination to ascertain what land you were on with reference to government surveys or sub-divisions?

A. No.

Q. So you do not know whether it was the same land or some other land that you were on?

A. No.

(Witness excused.)

DAVID LORING is called as a witness for the complainant and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, residence, age, and occupation?

A. My name is David Loring, I reside at Portland, Oregon, age sixty-one, civil engineer.

Q. Were you ever in the employ of the Oregon and California Railroad Company, and if so, when did you first commence your employment, and in what capacity, and for how long, and what were your duties?

A. I commenced work for them first in 1882 as locating engineer in the Cow Creek Canyon, about March the first, 1882, and remained until that fall, about October, and then I came into the office in Portland, and did more or less work around the engineer's office until the summer of 1883, and then I was appointed the right of way agent for the company which I occupied until the fall of 1884, then I went into the land department of the Oregon and California Railroad where I remained as chief clerk and the latter part of the time as assistant treasurer until October first, 1904.

Q. When was it you went into the land department of the Oregon and California Railroad Company?

A. In the fall and winter of 1884.

Q. When did you discontinue that employment?

A. October the first, 1904.

Q. Now, during the time you were chief clerk, who was your principal?

A. Mr. George H. Andrews.

Q. In what position was he?

A. Acting land agent and secretary part of the time, and part of the time treasurer of the company.

Q. Of the Oregon and California Railroad Company?

A. Yes.

Q. Where is he now?

A. He is dead.

Q. When did he die?

A. A year or more ago, I forget the date.

Q. Do you recall when he became secretary and acting land agent for the Oregon and California Railroad Company?

A. The same time that I went into the land department.

Q. Do you know who succeeded him as acting land agent?

A. Mr. Eberlein.

Q. Mr. Charles W. Eberlein?

A. Yes.

Q. Do you know who succeeded Mr. Andrews as secretary of the Oregon and California Railroad Company?

A. Mr. W. W. Cotton.

Q. Now what were your duties as chief clerk un-

der Mr. Andrews, as acting land agent and secretary during the twenty years that you were in his employ?

A. I had charge of making out all the tax rolls and had charge of making contracts and deeds and receiving cash and depositing cash and making vouchers for payment, and all the business of the office, and in the absence of Mr. Ewald, the assistant treasurer, I acted for him.

Q. Who was Mr. Ewald?

A. Mr. F. G. Ewald was an old clerk who was assistant to Mr. Andrews, and had formerly been private secretary for Mr. Koehler, manager.

Q. For how long had he been in the employ of the company?

A. He was there before I came into the employ of the company, I do not know how long he had been there.

Q. When did he discontinue his employment with the company.

A. I think it was about 1902 he was retired on a pension.

Q. Where is he now?

A. He is dead.

Q. Now what knowledge, if any, did you obtain with reference to the payment of taxes upon these lands involved in this suit, and which are described as lots 5 and 6 and the east half of the southeast quarter of section 29, township 1 south, range 2 east, of the Willamette Meridian, in Clackamas County, Oregon, known as cash entry No. 641 of James Grindley,

and the north half of the northeast quarter of section 32, township 1 south, range 2 east, of the Willamette Meridian, in Clackamas County, Oregon, known as cash entry No. 693 of Gardner Elliott as located on complainant's exhibit 1, and what, if anything do you know, about the Oregon and California Company paying the taxes on these lands from the time you first had charge of this matter up to the time you discontinued your employment?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence because the payment of these taxes are matters of record and can be shown by the records of the company.

Counsel for complainant proposes to show that all vouchers and tax receipts relating to this matter were forwarded to Mr. Charles W. Eberlein acting land agent for the Oregon and California Railroad Company at San Francisco, California, from the local office here, which receipts and vouchers were all destroyed in the conflagration and fire of April 18th, 1906, in San Francisco, California, and Counsel further will offer to show the loss of all records relating to the payment of taxes kept by the company, and will supplement the testimony of this witness by such transcripts of assessment rolls of Clackamas County, as can be produced after so long a time, tending to show that the complainant has paid these taxes on this land continuously since 1870 up to and including 1910.

A. I took the description of the land for taxation

from the records in the office on a list that was called miscellaneous lands account of the Oregon and California Railroad Company, and gave them in for taxes to the various counties. This was included in Clackamas County. Some times the assessors would throw out parts of my lists, and when the tax agent looked over the delinquent rolls in the fall about the time that taxes become delinquent, he made a copy of them and they were referred to me for correction or investigation, and if I found that anything was wrong in our taxes, I had to straighten the matter out.

Q. What is the fact, if you know, as to whether or not you caused to be paid the taxes on this particular land during the years that you were in the employ of the company?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence because the payment of these taxes are matters of record in the office of the company, and the records are the best evidence.

A. All taxes paid in Clackamas County were paid by vouchers made up by myself, and were paid by check, and all the time that I was there, this land was included every year to the best of my knowledge.

Q. Who claimed to own this land, if you know, during the time you were paying these taxes for the Oregon California Railroad Company.

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence.

A. The Oregon and California Railroad Com-

pany.

Q. What knowledge have you, if any, about the making of a survey of these lands,—what survey was made and what kind of a plat or diagram was furnished by the person who made the survey and what has become of that plat, and field notes of this survey, and when was it made, if you know?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence.

Counsel for complainant states that he will offer the same proof as to the destruction of the records as heretofore stated.

A. I remember specifically that the county surveyor of Clackamas County had the land surveyed by his deputy, and returned to the company a plat showing the boundaries of the land and described the corners by iron pipes or stones, and the bill or the amount of it was called to my attention because Mr. Andrews, at the time, thought the bill was excessive, and being a surveyor myself, I explained the matter to him and finally he approved the bill and it was paid.

Q. Do you recall what year this survey was made, and reported to the company?

A. I suppose it was in 1894, because immediately after, or sometime during that season, Mr. Andrews and I went to Milwaukie and went over the piece of ground about the time of the flood in 1894.

Q. When was the great flood in Portland, what year?

A. June, 1894.

Q. Do you recall what date the flood was at its highest that year?

A. Two or three days after election.

Q. June 8th, was it not?

A. Well, if June 8th was election day, it was two or three days after that.

Q. For how long did this high water,—or how long had this high water been coming before that time?

A. I guess for a week or two, perhaps longer.

Q. It was high water from what,—where did it come from?

A. Back water from the Columbia.

Q. Do you recall how extensive that high water was?

A. Yes.

Q. As to the Chamber of Commerce Building for instance?

A. The Chamber of Commerce Building,—the water must have been eight feet on the sidewalk.

Q. Do you recall where the offices of the Oregon and California Railroad Company were at that time?

A. Yes.

Q. Where were they?

A. Front and Columbia.

Q. Had the general offices been moved to Third and Washington at that time?

A. No.

Q. Now, what did you find when you and Mr. Andrews went out on these premises described in complainant's exhibit², indicating the making of a sur-

vey by anyone?

A. We found a line of brush and a couple or three iron pipes,—we only followed one line.

Q. I will ask you whether you are a surveyor?

A. Yes.

Q. I show you complainant's exhibit 1 and will ask you where you obtained that blue prin from?

A. From Cowing and Cowing.

Q. And what did you do with it?

A. I put this red line on it myself after having been to Mr. Boske's office, the chief engineer, for the Oregon and California Railroad Company and gave him the correct measurements to do so from.

Q. You say Mr. Boske is chief engineer of the Oregon and California Railroad Company,—he is also chief engineer for the Southern Pacific?

A. Yes sir, I believe he is.

Q. I will ask you whether or not from your knowledge of township 1 south, range 2 east, and of the location of the line of the Oregon and California Railroad Company, and the location of this land in controversy, this plaintiff's exhibit 1 is a correct map and plat of that township according to the government surveys and is a correct location of the land in controversy according to the government survey, and a correct location of the line of the Oregon and California Railroad Company as the same now is on the ground?

A. Yes.

Q. I call your attention to complainant's exhibit 2, and will ask you what the fact is as to whether or not that is a correct tracing of the boundary line of

this land in controversy, and of the roads as they now are and of the various physical monuments, fencing, etc., as shown thereon?

A. Yes approximately.

Q. Drawn to scale?

A. It was partly drawn to scale from the government field notes, but some of the government field notes I did not have. I did not have the location of this diagonal road, and I put that in simply upon inspection of the grounds.

Q. What is the fact as to your having made all these entries on this exhibit 2 from the records and from the facts as you found them?

A. Yes, all of them.

Q. I notice the location of a road to Oregon City apparently located on the east boundary line of this 229 acres.

Q. What is the fact, if you know, as to how long that road has been there the way it is now?

A. It has been there ever since I knew anything about the country.

Q. What road is that?

A. It is called the Gray's Crossing Road further north, and it goes direct to Oregon City through Clackamas station.

Q. Is it, or is it not a well traveled county road?

A. Yes, it is.

Q. What is the fact as to the location of the diagonal road indicated on the southeast corner of the eighty acres on the Gardner Elliott tract?

A. That is the old original road to Clackamas and

Oregon City which is still used.

Q. How long has that road been there to your knowledge?

A. As long as the other.

Q. Is it still there as shown?

A. Yes.

Q. Now, I notice a road between these two tracts on the section line called "Road to Milwaukie", when was that road opened if you know, or about when?

A. Since the time that Mr. Andrews and I went on the ground.

Q. When was that that you and Mr. Andrews went on the ground?

A. In the summer of 1894.

Q. Was that road on the section line across this tract running east and west at that time?

A. Not that I know of.

Q. Well, if there had been would you have seen it?

A. I think I should.

Q. Now, I will ask you to state what you found when you and Mr. Andrews went to look at this land in the summer of 1894.

A. We found an iron pipe at the northwest corner of the eighty acres of the Gardner Elliott tract, and what I call another at the northeast corner where those iron pipes now are.

Q. The Gardner Elliott eighty?

A. Yes, this corner here. (showing on map.)

Q. What other iron pipes, if any, did you find?

A. We did not go any further. We tried to follow that line north and lost it.

Q. Were you on the north boundary of the James Grindley tract at that time?

A. No.

Q. Were you on the east boundary of the James Grindley tract?

A. No. Only on the Gardner Elliott piece.

Q. What indication of old fences, if any, did you find on the Gardner Elliott tract, and if so where were they?

A. We went thru until we came to this east line, and there seemed to be a fence running north and south on the east line; that was the only fence that we saw.

Q. Did you undertake to follow the west boundary between the Hector Campbell Donation land claim and the James Grindley cash entry?

A. We did not go there.

Q. Did you attempt to follow that boundary?

A. We attempted to follow it from the southwest corner of the Grindley piece northward and followed the cut line thru the brush for some distance, and it faded away, and we lost it, because the donation claim takes a jog east and we did not know that.

Q. That jog is a short distance from the section line on the Hector Campbell claim as shown on this exhibit 2, is it not?

A. Yes.

Q. The jog in the Hathaway claim is shown also?

A. Yes.

Q. Now, what was the size of these iron pipes or tins or did you notice?

A. I do not know. I do not remember.

Q. Now, were you out there on Saturday last with Mr. Fenton and Mr. Wishard?

A. I was there Friday and Saturday.

Q. At whose request did you go out there on Friday?

A. Mr. Fenton's.

Q. For what purpose did you go, and what did you find?

A. Went out for the purpose of seeing what fences there were at the present time, and what traces there might be of old fences on the lines of the property, and also what monument there might be at any of the corners and to look for the location of an old mill.

Q. Were you there on Saturday also?

A. I was.

Q. Did you go out with Mr. Fenton and Mr. S. E. Wishard, the witness who has just testified?

A. Yes.

Q. What was your purpose in going out on Saturday?

A. To show where I thought the mill site was.

Q. Now, just tell the court what you found indicating any old fences and where they were, and what indications of an old mill site, and what they were, and what the physical facts were, just go on and describe them.

A. I went to the northeast corner of the Grindley tract, and found an iron pipe which had been there a good many years. Two fences join there, both running

westerly, and a board post and wire fence, and the other a little south of this diverging from the course northerly, the old post in the ground showing that it was the old original line fence, the posts are there yet.

Q. How far apart is the new fence,—the wire fence from this line of fence indicated by the old post?

A. They start at the same point and run westerly for about six hundred feet. The post, board, and wire fence is very old also, and then you come to a barn and inclosure, and the fence jogs back to the old line,—the old southern line of fence was replaced by a new fence there, which goes southerly thru the Hector Campbell land.

Q. That is the northwest corner of the Grindley tract?

A. Yes, and this line of the present post, board, and wire fence if continued on westerly would strike a point on the east line of the Campbell claim about fifty feet north of where the old fence is. And fifty feet north is an old iron pipe there at the northwest corner.

Q. Let me understand you, at the northwest corner of the James Grindley tract is a wire fence that has more recently been erected, and fifty feet north of where the old fence was?

A. At the northwest corner.

Q. I mean the northwest corner.

A. Yes.

Q. So that is constructed fifty feet from the northwest corner of the James Grindley tract, and running to a point at the northeast corner, between what was

an old fence and the present new wire fence?

A. Yes, for part of the way, for about six hundred feet. At this point there is a barn yard and the westerly part of that fence is inclosed by this old fence.

Q. That is to say, the new fence only goes from the northeast corner about six hundred feet?

A. Yes.

Q. And from there on it is an old fence?

A. Yes.

Q. From your examination of this old fence, can you give the court any idea as to about how long that has been there?

A. From fifteen to twenty years.

Q. What kind of a fence was it,—this old fence?

A. There were posts there for six hundred feet,—old posts,—cedar mostly, very rotten and loose in the ground, and the brush growing all up along there, showing that it had been an old fence line.

Q. What did you find, if anything, about a fence along the other boundaries? Just go on and describe them.

A. There is a fence down the east line of the Hector Campbell claim which is the west line of the Grindley tract all the way down to the road on the section line,—an anchor fence with posts about twenty-four feet apart.

Q. When was that put in, do you know?

A. I cannot say.

Q. That is a more recent fence?

A. Yes, that is a new fence.

Q. Then go on and describe the other fences.

A. There is a fence along the south line of the Grindley tract and east line of the Grindley tract and on the north line of the Gardner Elliott piece, and east line of the same,—both sides of the diagonal road, running through the southeast corner of the Gardner Elliott tract, and for a very short distance on the south line westerly from the diagonal road, and the majority of the west line of the Gardner Elliott tract is all the same fence,—anchor fence.

Q. What indications are there of an old fence on the south line of the Gardner Elliott tract at the present time?

A. West of the diagonal road is an old fence in two or three different parts of different ages. The posts are all old all the way through, but the fence has more or less been repaired and renewed in recent years.

Q. Was that part of or was it built as part of the anchor fence?

A. Only about a rod or two west of the diagonal road.

Q. Is, or is not, that old road practically on the line between Gardner Elliott and the adjoining proprietor?

A. If anything, it is a little south of the line at the westerly end. It is a foot or two, or three feet at the easterly end, and perhaps ten or twelve feet at the westerly end.

Q. Do you know what kind of posts were used on that old fence?

A. Cedar.

Q. Can you give an idea about how long those old posts had been in?

A. They must have been there over ten years, perhaps, some of them more than twenty-five years.

Q. You do not mean to give only an estimate?

A. That is all, only an estimate.

Q. What evidence, if any, did you find, of some structure having been on this tract of land,—foundation timbers or other structures or evidence of an old structure,—a mill or something of the kind, and if so, where did you find these, and what were those evidences?

A. On the southerly part of the Gardner Elliott eighty, and a little west of the center I found a lot of old bed timbers, all to my mind evidencing an old mill, —and also the bed timbers of the platform, which had been used to run the timber out. There was evidences that the cross timbers had been dressed off with an ax or other tool to size them down, and at the westerly end were the old bed timbers of the old roll way for rolling logs down.

Q. What indications of an excavation were there,—trenches or otherwise?

A. Close to the mill site is what I should designate to be a pit about the size of this room, and about three feet deep, which might have been for the engine house. Off, perhaps thirty or forty feet to the east of what would be the front end of the mill, was a large place which looked like a saw dust pile, having been burned and burned until it had burned away down into the ground, leaving the remains on each side of the saw dust and other debris.

Q. You say you saw bed timbers, the old roll way

and the excavations or trenches?

A. Yes.

Q. Are the trenches there today?

A. Yes.

Q. What is the character of this land, as to its having been at one time covered with large fir timber, suitable for saw logs, and what is its condition at the present time with reference to this big timber?

A. It is all cut off now. There was a great deal of it, and it was very large timber, some of it was cut many and many years ago, when they did not conserve the timber as much as they do now, and the stumps were cut off eight and ten feet high, whereas they cut two or three feet high now.

Q. Can you give the court an estimate of the size of some of these trees from the stumps?

A. Four or five feet in diameter.

Q. What is the fact, if you know, as to whether there are any large trees now standing on this land?

A. No,—not live trees.

Q. What is the character of these stumps as to the period of time when the timber must have been cut from them, if you can tell?

Counsel for defendant objects to the questions as being leading, and because the witness has not shown any qualification to answer such a question.

A. As long ago as I came here.

Q. That is, before you came?

A. Yes, before 1882.

Q. What is the fact, if you know, as to what fire has done to that land, and when this fire must have

gone over it, from what you saw?

A. Fire had been over it more than once,—all over it.

Q. When, with reference to time, was this fire,—judging from the present growth of young brush and timber?

A. It looks to be about ten years from the young brush that has been growing there.

Q. Could you tell whether there had been more than one fire from what you saw?

A. There has been more than one.

Q. What is the fact as to whether all these stumps or any logs that might be there have been through a fire?

A. Yes, they all have.

Q. Did you notice whether or not any of these fir stumps were sound or rotten?

A. A few on the higher ground were sound, but nearly all on the lower ground, where the mill stood, were all decayed.

Q. What character of timber,—what kind of timber were these large trees?

A. Apparently fir.

Q. Counsel has questioned your qualification to testify as to timber,—have you had any knowledge or experience about timber, and particularly fir timber?

A. Yes, considerable.

Q. What?

A. I have surveyed in it for forty years or more.

Q. And have you also, in your office work, for the Oregon and California Railroad Company had any

knowledge and experience with reference to cruising for the company?

A. Yes, I have done cruising myself.

Q. What experience have you had in cruising timber land and fir land for the company?

A. Only for the purpose of my own private inclination in making appraisments in my employment with the railroad company.

Q. Were you familiar with the cruise reports of the company's land for many years?

A. Yes, they were in my custody.

Q. Did you have access to the report?

A. I did, I had my typewriter make reports on them.

Q. What is the fact as to what these cruising reports generally showed in reference to the timber?

A. It showed the number of thousand feet as a general thing which the cruiser found on the land.

Q. Now, Mr. Loring, what kind of map, or plat, or field notes, if any, were furnished to you, or to the company by the men who made this survey of these lands in 1904?

A. I do not remember whether it was a tracing, or on paper.

Q. What was it?

A. It was a map drawn to scale, and giving the boundary lines of this property, and the number of acres and a description of it, and the monument put at the various corners.

Q. State to the court whether or not it was a correct plat or tracing, or whatever it was, of the exterior

boundaries of these two tracts of land, and what became of it.

A. Yes, it was,—it was filed with the vouchers,—I will have to explain the way we draw vouchers for the payment of bills. The original bill was attached to the voucher, and the check was attached to it, and sent to the payee, and when he sent back the signed voucher, the bill was attached to it, and at the end of the month the bank who paid it sent it back, and this map was attached to the voucher and became a part of the voucher.

Q. Where was it sent,—to whom was it sent?

A. It was sent to our office and put away among the files under its regular number.

Q. What became of it later?

A. It was packed up with the other vouchers and sent to San Francisco.

Q. What personal knowledge have you of the packing of these vouchers and records of the Oregon and California Railroad Company, of the land department and shipping of them?

A. I had the vouchers made and put all the stuff into the boxes and fastened them up myself and saw them shipped.

Q. To whom were they shipped?

A. To the land office in San Francisco.

Q. To what person?

A. To Mr. Eberlein or to Mr. Miller,—Charles W. Eberlein, or Mr. H. W. Miller.

Q. Who was acting land agent in San Francisco?

A. Mr. Eberlein.

Q. About what time were these records shipped?

A. About September, 1904.

Q. What is your recollection as to what became of this particular voucher,—this particular map, with reference to that box of stuff?

A. It went into the box and then to San Francisco.

Q. Have you ever seen it since?

A. No sir.

Q. You have no knowledge of this fire, you were not there,—I mean this fire in San Francisco, April 18th, 1906?

A. No, only by hearsay.

Q. Are you in the employ, or have you been in the employ of the Oregon and California Railroad Company, or any of its affiliated lines since 1904?

A. No.

Q. Where do you reside?

A. In Portland.

Q. And at the present time what is your business?

A. Civil engineer.

Q. And you obtained this plat, complainant's exhibit No. 1, from the firm of Cowing and Cowing?

A. Yes.

Q. Who are they?

A. They make blue prints for abstracts.

Q. What checking up of this blue print, if any, did you make with the township plat in the surveyor general's office?

A. I went to the surveyor general's office to get a blue print from them, and the chief clerk said that they did not have them, and could not furnish them to me,

and he advised me to go to Cowing and Cowing, as they were the most accurate, and get one from them, which I did.

Counsel for defendant admits that the plat complainant's exhibit 1 correctly shows the various tracts and various entries appearing on the original township plat but does not admit that the located line of the Oregon and California Railroad Company, as traced in red, is shown on the original.

Counsel for complainant now reoffers in evidence the maps heretofore marked for identification as complainant's exhibits 1 and 2, as part of the testimony of this witness, and as a part of the testimony of the preceding witnesses, A. M. Elam, and S. E. Wishard.

Cross-Examination

(Questions by Mr. HENRY CONLIN.)

Q. Mr. Loring, you say you went into the employ of the Oregon and California Railroad Company in 1884, in the land department?

A. Yes, in the fall of 1884.

Q. And you made up the tax lists for the payment of taxes on lands?

A. Yes, I did make them when I was tax agent. I was right of way agent one winter.

Q. What year did you first make up the taxes lists which included the land in question here?

A. The winter of 1882 and 1883,—before I was made right of way agent.

Q. Do you recall that from any independent recollection, or is that just a guess?

A. I recollect it.

Q. You made a list of all the lands?

A. I included everything there was.

Q. But you have no distinct recollection about including this land as far back as that?

A. No, not one year from another.

Q. And when you made your first list of land, was this land on the list which you found in the office, and from which you started in to do your work?

A. Yes.

Q. So in making your list you were governed by the list made in the first place by some one beyond you?

A. Yes, I know who made it out.

Q. Who?

A. Mr. Cunningham, the secretary and treasurer previous to Mr. Andrews.

Q. Now, other than the fact that the land was on a list of lands upon which the company was paying taxes, you have no knowledge of any claim that the company made to the ownership of the land beyond that?

A. No.

Q. And that is what you mean when you say the company claim to own the lands,—is that it was included along with other lands upon which they paid the taxes?

A. It was on their record as land which belonged to them. It was on the record books on the file of the secretary and treasurer.

Mr. CONLIN: I ask to have that answer stricken out as not responsive to the question, and I object to it on that ground.

Q. Now, I did not get quite clearly, Mr. Loring, this morning, your statement with regard to old fences, which, you say, you saw on this land when you examined it in 1894,—can you point out there again to me, where the fences were, which, you say, you found at that time upon exhibit 2?

A. On the east line here, and down this east line here. (showing upon exhibit 2)

Q. Along the east line of what?

A. Of the southerly portion of the southeast quarter of section 29, and on the west line of the diagonal road and the northeast quarter of the northeast quarter of section 32.

Q. For what distance?

A. As far as we could see when we got up on top of the fence.

Q. How far could you see?

A. Perhaps a quarter of a mile or more.

Q. And this was an old snake fence?

A. An old snake or worm fence.

Q. You did not examine any of the other boundaries to see if there was a fence there or not?

A. No.

Q. You remember of being out there years ago, and seeing some old fence?

A. Yes.

Q. Is that old fence there now that forms part of the fence inclosing the premises along with the new fence?

A. Yes.

Q. That fence,—you do not know when that was

built?

A. No,—I only judge it must be fifteen or twenty years old.

Q. Your judgment is just simply based upon the weather stains and conditions of the fence?

A. No,—from the growth of the brush and trees along the line of this same fence,—on which the fence is included.

Q. Would you be able to distinguish between a fence twelve years old and one fifteen years old?

A. Probably not within three years.

Q. You think that you could between ten years and fifteen years?

A. Yes.

Q. You think you could determine whether a fence was ten years old or fifteen years?

A. Yes.

Redirect Examination.

(Questions by Mr. W. D. Fenton.)

Q. Was that a snake fence or a post and board fence that you referred to?

A. On which line?

Q. You answered counsel when he asked you if that was a snake fence, that it was,—my understanding of a snake fence is a rail fence?

A. Yes, a rail fence.

Q. What do you mean by a rail fence?

A. Just rails laid in position on an angle so, (showing).

Q. You mean a worm fence?

A. Yes, a worm fence.

Q. Are there any posts used in a fence of that kind?

A. Only for the stake and riders.

Q. Now did you observe on this old fence on the north side some posts that were perpendicular that had been used for the line fence?

A. Yes.

Q. What kind of a fence was that in which these posts were used?

A. I could not tell, there was nothing but the posts there.

Q. Those posts, however,—are they used on a snake or worm fence?

A. No, I do not think so.

Q. Then if I understand your testimony and your answers to counsel,—the posts that you refer to as being in some old fence were posts that were in a previous straight line fence of some kind?

A. Yes.

Q. I will ask you this question,—it is new matter that I will ask you,—do you know anything about some cord wood contract being let by the company for the cutting of cord wood on this land?

A. No, there was a contract made out to cut the wood off.

Q. About when was that?

A. I am not certain whether it was after the survey or previous thereto.

Q. When you say survey do you mean the survey made in 1894?

A. Yes.

Q. Now, just what is your remembrance as to who handled that matter?

A. Mr. Andrews.

Counsel for defendant objects to the question and answer as irrelevant and immaterial, and hearsay, and not the best evidence.

Q. Did you have personal knowledge of this contract?

A. Yes, I have seen it.

Q. You have seen the contract?

A. I saw it at the time.

Q. Did you have something to do with making it,—or seeing that it was made out?

A. Either I or the stenographer wrote it out.

Q. You saw it after it was written?

A. Yes, I saw it,—it was kept among the records of the office.

Q. Now, what was the arrangement between the company and this person for the wood?

Counsel for defendant objects to the question as irrelevant and immaterial and not the best evidence, and leading.

A. He was to cut the wood for a stated sum per cord and he paid the money into the office. Whether he had to pay it in advance or as he cut it and it was checked up with him, I do not know.

Q. Now, to what extent and over what land did this contract relate?

A. To the northeast quarter or fractional quarter of section 29.

Q. That would be the James Grindley tract?

A. Yes. And if there was any timber standing on the north part of the eighty.

Q. What tract?

A. The north half of the northeast quarter of section 32,—if there was any timber on it.

Q. Can you state who the party was?

A. No.

Q. About what year was that?

A. I cannot say whether it was preceding or subsequent to 1894.

Q. If it was subsequent to 1894, about what time would you say it was according to your best recollection?

A. Well, within a couple of years.

Q. Either way?

A. Yes, I should think so,—either before or after.

Q. Do you know whether or not the person who had this contract for the cutting of the cordwood on this land did in fact cut the wood on the land?

A. I did not see him personally do it,—he made his payments.

Q. Do you know about how large a contract it was?

A. No,—I cannot remember that.

Q. Do you know where the wood was to be marketed, or what became of the wood, or where it went?

A. No, I do not.

Q. Who was the general manager of the property at that time,—who was vice-president of the Oregon and California Railroad?

Counsel for defendant objects to the question as not

the best evidence, and as incompetent, irrelevant, and immaterial.

A. Mr. Richard Koehler.

Cross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. Mr. Loring, you never have been an officer of the Oregon and California Railroad?

A. Yes, I was assistant treasurer.

Q. Regularly elected?

A. I was appointed assistant treasurer.

Q. Appointed by whom?

A. Well, I cannot say.

Q. By the treasurer?

A. No.

Q. Were you appointed by resolution of the Board of Directors?

A. I cannot say how it did come around.

Q. Do you know where you got your appointment from?

A. I suppose it came from the office in San Francisco,—from the Southern Pacific,—whoever was in control of the office.

Q. Who advised you of your appointment?

A. It was by letter.

Q. From whom?

A. I do not remember that now,—it probably came from Mr. Koehler, the manager of the office.

Q. But you never were,—so far as the land department was concerned, an officer of the land department?

A. No.

Q. Your position was clerk?

A. I was chief clerk,—I beg your pardon, I was right of way agent also.

Q. I am asking you about the land department.

A. No, not of the land department.

Q. Did it ever occur, Mr. Loring, while you were attending to the taxes for the company that the company paid taxes on land that it did not own?

Counsel for complainant objects to the question as immaterial.

A. No,—they endeavored not to.

Q. Did not it ever occur that the company paid taxes on land that it did not own?

A. No.

Q. You are quite sure about that?

A. Not that I could help,—it did not that I know of.

Q. Did it ever occur that lands were listed on your lists that the company did not own?

A. No, not on my lists.

Q. What were the requirements that the assessor required you to make to him for assessing the land?

A. He would assess the land to the company and sometimes he would assess land which the company had sold and delivered the deed to, and the deed had gone out for record, but the assessor would still list those lands to us, and I would have the mstricken off the roll. I did not return them as taxable lands, but he would put them in and assess them to the company, and I had to see that they were taken off.

Q. Did it occur that land would get on your list and

the company would be assessed for land that it did not own?

A. No.

(Witness excused.)

N. E. BRITT is called as a witness for the complainant and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, residence, age, and occupation.

A. My name is N. E. Britt, age sixty-eight, residence, Newberg, occupation, I am not doing anything much at the present time.

Q. Were you ever in the employ of the Oregon and California Railroad Company, and if so, when did you begin your employment, and in what capacity, and for what length of time, and what were your duties?

A. Yes, I began work for them in 1888, as land examiner and appraiser of the land grant.

Q. How long did you continue?

A. About eighteen years.

Q. When did you discontinue your employment?

A. I think about 1905 or 1906.

Q. Now, who was your superior officer, or to whom did you report, and who had general supervision over you?

A. George H. Andrews.

Q. In what capacity was he acting for the Oregon and California Railroad Company?

A. He was land agent.

Q. Was he or not to your knowledge also secretary of the company?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence,—the record of the company would be the best evidence.

A. Yes, he was.

Q. Now, state to the court what your duties were as land examiner, and what you did.

A. My duties were to examine and report upon the kind of land, whether timber, grazing, or agricultural, and the kind of soil, and things that I thought proper for placing a valuation upon it, and I was also to look out for trespassers or anything of that kind that needed attention.

Q. Did you, or did you not, have any experience as a timber cruiser during that period of time or before?

A. I did.

Q. What experience have you had in the cruising of timber in this country, and particularly fir timber in the Willamette Valley,—how general has been your experience?

A. Well, upwards of twenty years.

Q. I call your attention to the blue print,—complainant's exhibit 1, which purports to be a blue print map of township 1 south, range 2 east, of the Willamette Meridian, and which shows on this plat the J. Grindley cash entry No. 641, being lots 5 and 6, and the east $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 29, township 1 south, range 2 east, and cash entry 693 of Gardner Elliott, or G. Elliott, being in the north $\frac{1}{2}$ of the

northeast $\frac{1}{4}$ of section 32, township 1 south, range 2 east of the Willamette Meridian, all in Clackamas County, Oregon, and I will ask you whether or not you were ever upon these lands, and if so, when it was, and the occasion of your visit or trip to these lands.

A. Yes, I was upon them several times.

Q. Do you know where these lands are located?

A. I do.

Q. What are those lands that you visited?

A. I think they are parts of section 29 and parts of section 32.

Q. I will ask you now what occasioned your visit there, and what you found, and when it was?

A. Well, the first time I visited these lands was about 1889 or 1890. I was directed to go out and examine them and appraise them.

Q. Who directed you to do that?

A. George H. Andrews.

Q. Well, go on.

A. Well, I afterwards visited them frequently to see them occasionally to see that they were not being trespassed upon or damaged.

Q. Now, on the occasion of this first visit in 1890,—what examination, if any, did you make as to the character of the lands, and the timber that was on the land, and improvements of any kind?

A. I went over it thoroughly and informed myself in regard to it.

Q. What did you find?

Q. I found that it had been timbered once quite heavily, and the timber had been cut off, and a fire had

been over it, and also that there was no wood or timber left, except some down trees, and some trees that were pretty defective, that were left.

Q. What evidence, if any, of improvements or fences were there at that time, if you recollect?

A. Well, my recollection is that there was a fence on one side, an old rail fence.

Q. State to the court, by reference to complainant's exhibit No. 2, where the fence was that you saw,—the old fence,—the top of this exhibit is north, and the road is east of the Hector Campbell claim, and west and south is a road through between the two tracts.

A. This is the place here (the witness points to the north line of the Grindley tract). I think there was some new fence,—I am not certain whether that was there the first time I was there, or later on, but sometime there was some new fence built along there, and down in here,—(witness points to the Gardner Elliott tract) and probably up in there. (showing on map by pointing near the center of the tract to an old saw mill).

Q. I call your attention to that part of the plat marked "old saw mill" on the Gardner Elliott tract, and I will ask you to state what your recollection is as to whether or not there was an old saw mill somewhere there?

A. Yes, there has been an old saw mill down in there.

Q. What kind of a saw mill did you find there,—just describe it in your own way.

A. Well, the usual debris that is around a saw mill, —pieces of bark and pieces of lumber and the old roll

way, I think, was there.

Q. This was in what year?

A. Well, I think this was in 1889 or 1890,—somewhere in there.

Q. What fences, if any, did you find on the south boundary line of the Gardner Elliott tract?

A. Well, it seems to me there was some old rail fence on the east boundary of it.

Q. On the county road?

A. Yes. I am not certain but I am under the impression there was some fence on the south boundary.

Q. What is the fact as to there being an old fence, if any, along the west boundary of this eighty?

A. I have no recollection of seeing any.

Q. What character of trees or stumps did you find there upon this land before you were there in 1889 or 1890?

A. Well, there had been a very fair quality of fir timber on the land.

Q. Well, as to size, what would you say?

A. It was of good size, a good deal of it.

Q. Can you tell, Mr. Britt, from an examination or observation of these stumps and any logs that might have been left there, cut and unused about how long before had this timber been cut down or logged off?

A. Well, of course, I could form some idea.

Q. Can you give any idea as to whether it was a long or a short period before 1889?

A. Yes, it had been cut for some time.

Q. What was the fact at that time as to whether it was burned over?

A. It had been burned over,—there had been a fire over it.

Q. What was the fact as to whether there was any undergrowth, and if so, what was the character of that undergrowth, and about what was its growth and age?

A. There was considerable undergrowth consisting of dogwood, hazel, some fir, and some maple,—and vine maple.

Q. Can you give any reasonable estimate of the age of this undergrowth?

A. Well, I should suppose about a dozen years.

Q. Then what would you say was the fact as to whether this first,—this general fire that burned over this land occurred prior to the time the undergrowth started?

A. Yes, it probably did,—of course the undergrowth varied in size and very likely the undergrowth had grown,—some of it previous to the fire.

Q. What was the character of the land as to soil, &c.?

A. Well, it was a clay loam, I should call it, and some gravel.

Q. Did you, or did you not, make an appraisal or valuation of the property at that time?

A. Yes.

Q. What valuation did you place on it at that time if you recollect?

A. Well, I am under the impression that I appraised it at about \$200 or \$250 an acre.

Q. In 1889?

A. In 1890.

Q. Do you recall, Mr. Britt, about how far it was from the nearest point of this land to the nearest point of the railroad as shown on blue print, complainant's exhibit No. 1?

A. My recollection is that when I went out there, it was somewhere about three miles.

Q. Where did you get off?

A. I got off, I think, at Milwaukie. Another time when I went out I got off at Gray's Crossing station on the electric line.

Q. But you never got off at the nearest point on the railroad to this land, and went straight over to the land did you?

A. No I did not.

Q. Do you remember, or do you recall, that the railroad makes a curve from Milwaukie east towards Clackamas station and comes very much nearer to this land than three miles as you have stated?

A. I do not know.

Q. You got off at Milwaukie, you say?

A. Yes, when I went out on the Southern Pacific, and when I went on the electric line, I got off at Gray's Crossing station, I believe it was called.

Q. I call your attention to complainant's exhibit 2, and will ask if you recollect as to there being a diagonal road across the southeast corner of the eighth at the time you first went there?

A. Yes. It is not very much of a road, I do not consider,—it is a kind of wood road,—an old road, not very much used.

Q. At that time had that road been open, that is now

shown between the section line?

A. Well, I do not think that it had been officially opened.

Q. When was the next time after 1890 that you visited this property?

A. Well, I cannot really tell just when it was, but not very long after this, I used to go out frequently,—that was part of my land to attend to and look over. I can hardly tell you it is possible that I felt an interest as that was land that was under my charge, and I kept watch to see that it was not disturbed or trespassed on.

Q. How many times do you say you visited or inspected these lands under the direction of the Oregon and California Railroad Company?

A. I presume ten or a dozen times.

Q. When was the last time that you inspected this land for the company for the purpose indicated?

A. I should judge about 1902 or 1903.

Q. When was it that you discontinued your employment?

A. About 1905 or 1906, I believe was the last work I done for them.

Q. Now what did you have to do, if anything, with the cord wood that was cut on this land?

Counsel for defendant objects to the question as leading, and calling for the witness's conclusion and not based upon any facts in evidence.

A. Well, I think, the party had been given permission by Mr. Andrews,—Mr. Andrews had granted the party permission to cut with the promise from this par-

ty as fast as he hauled off and received the money for it to bring it in and pay him. In fact, the party represented to him that he needed the wood,—that he was in distress, and that it was necessary for him to get this wood without paying the money down. That if he could cut it, he could sell it, and that it would relieve him to some extent of his distress.

Q. Do you know who this party was?

A. No, I do not recollect his name.

Q. What did he do,—how much wood did he cut, do you know?

A. I do not know, I know he cut quite a good deal after he had been granted permission to cut and I was sent out there to see how much he had cut and I found that he had cut quite a lot.

Counsel for defendant moves to strike out the answer of the witness on the ground that the witness has not shown himself to express an opinion, and as incompetent, irrelevant, and immaterial.

Q. About when was this, Mr. Britt?

A. It might have been about 1900, I can hardly tell.

Q. Where was this wood cut, with reference to this land,—this 229 acres, as you remember?

A. The main part of it was cut in section 29.

Q. What other business transaction, if any, did you have, in connection with this land about which I have not asked you, if there was any of them?

A. Well, I was in the employ of the railroad company, and examined the land and looked after it. This land was in my charge, and I occasionally went over there and I discovered at one time when I went over

there that the county of Multnomah, I believe it was, was obtaining gravel from the land.

A. The County of Clackamas, was not it?

A. No, I think it was Multnomah County. It is possible that it may have been Clackamas County, but I am under the impression it was Multnomah County that was obtaining gravel for the purpose of graveling the road.

Q. Do you know about when this was?

A. I think that was, perhaps, somewhere about 1900, or later than that, 1904.

Q. During all the time that you were in the employ of the Oregon and California Railroad Company and were on the premises examining this land and observing the same for the purpose of presenting trespassers or reporting the same, who claimed to own this 229 acres of land?

Counsel for defendant objects to the question as leading and calling for the conclusion of the witness, and not based upon any fact in evidence, and apparently beyond the scope of his knowledge.

A. It was presented to me as the land of the Oregon and California Railroad Company.

Q. What company claimed to own it,—the Oregon and California Railroad Company?

A. I believe they did.

Q. Do not you know, Mr. Britt?

A. I know that it was given to me as the Oregon and California Railroad Company's land.

Q. By whom?

A. By the land agent, Mr. Andrews.

Q. What is the fact as to whether you exercise control over that land under Mr. Andrews for the company during that whole time?

A. Yes, I did.

Q. Did any one else, to your knowledge, claim to own this land, or have anything to do with it?

A. Not to my knowledge. I never knew anyone to dispute the company's claim at all.

Q. I do not remember whether I asked you about the site of a saw mill,—do you recall seeing the foundation of what might have been an old sawmill on this land at any time?

A. Yes.

Q. Where does your recollection say this sawmill was with reference to the Gardner Elliott tract, the eighty acres in 32?

A. Well, it was pretty near the center of that tract.

Q. What evidence, if any, did you observe of a saw mill?

A. Well, I saw the old debris and I saw this roll way there.

Q. Any trenches, or foundations of trenches?

A. Well, there was quite an excavation had been made there,—I judge for water to run the engine with.

Q. You never saw this mill, I suppose?

A. No.

Q. When you first saw these lands, what is the fact as to whether they appeared to have been burned over?

A. They had been burned over.

Cross Examination

(Questions by Mr. HENRY CONLIN):

Q. You say, Mr. Britt, that you first examined these lands in 1889 or 1890?

A. Yes.

Q. The land was logged off at that time, and was just simply wild, uncultivated land?

A. Yes.

Q. Unoccupied land?

A. Yes.

Q. It was not occupied in any way, was it, by any one?

Counsel for complainant objects to the question as calling for a conclusion of the witness and as incompetent, irrelevant, and immaterial.

A. I mean, was the land occupied by anyone, or was there any evidence of anyone being upon the land?

A. No one lived on it that I now recollect.

Q. You have no recollection of the number of times thereafter that you were there?

A. I cannot recall every time,—no,—I was there many times.

Q. You are a timber cruiser, are you?

A. I have been.

Q. And you were employed by the railroad company as cruiser?

A. Yes sir.

Q. And as such your duties required you to go about over the land grant land and cruise the lands?

A. No, I did not attempt to cruise it all.

Q. You went over different portions of the grant?

A. For a good many years, I had charge of the field work of the land,—that is, I was expected to look for tresspassers and such as that.

Q. And you did some cruising, did not you?

A. Yes, a good deal.

Q. And examined the land all over the land grant, and appraised them for the purpose of sale?

A. Well, in a good many cases.

Q. So that your duties were not confined to any particular land in the land grant, but extended generally to all parts of it,—so that this land was not any more in your care and under your control than any of the other lands belonging to the railroad company?

A. No, sir.

Q. And this land was not any more under your control or in your charge than it was in the charge of Mr. Loring, for instance, who was in the office?

A. Yes, I think it was.

Q. In the sense simply that you went up and examined it?

A. That was my part of the work. That was my duty,—to attend to the field work outside.

Q. But other than that,—other than that you were directed by an officer to go out and examine it, you had no charge or control?

A. I was held responsible to some extent for tresspassers that were committed on the ground.

Q. You were held responsible,—how were you held responsible?

A. I would be considered derelict in my duties.

Q. If some one went out there at night and cut down

some of the trees, would you be held responsible?

A. If they did a great deal of it, and I did not report it, I would be responsible. It was my business to look after it.

Q. If you were called to Jackson County to cruise some land and were gone a month, would you be held responsible for any trespass committed on this land during your absence?

A. Probably not,—that would be a good and valid excuse.

Q. You say that between 1890 and 1902 or 1903 you examined this land probably ten or a dozen times?

A. Probably I was on it that many times.

Q. What kind of trespasses could have been committed upon this land while you were looking after it?

A. Timber or wood could have been taken, or gravel could have been taken from it.

Q. It was open, it was not fenced, was it?

A. It was fenced on the east side,—part of it was fenced.

Q. Part of it?

A. Yes.

Q. The north side had a fence built on the adjoining land?

A. No, the north side was bounded by a road.

Q. No fence on the north side?

A. It was on the north side where the fence was.

Q. That belonged to the adjoining owner?

A. I suppose so?

Q. But otherwise the land was open so far as trespasses by cattle and that sort of a thing,—it was just an

open common?

A. No, we did not regard a trespass by cattle and the like running on the land.

Q. So it was accessable to anyone that wanted to turn cattle on it?

A. I suppose they did run on it.

Q. You say the company claimed to own this land,—did you ever know that the record title of this land stood in the name of Ben Holladay's heirs?

Counsel for the complainant objects to the question on the ground that the record title stood in the name of Ben Holladay and Company.

A. What is your question?

Q. Did you ever know that the record title to this property was in the name of Ben Holladay's heirs, or of Ben Holladay and Company, and not in the name of the Oregon and California Railroad Company?

A. No, I know nothing about that.

Q. So that the only thing that you know about the Oregon and California Railroad Company claimed was that you heard rumors?

Counsel for complainant objects to the question as incompetent, and not what the witness stated.

A. They gave it to me, as their land, for me to examine and look after.

Q. Further than that you have no knowledge?

A. I never saw an abstract of title, or anything of that kind,—all I know about it is what I was told by the land agent.

Q. Your inspections of the land were just matters of walking around and across it, and looking at what was

there?

A. My first inspection was to appraise it.

Q. You simply mean that you walked around over the land and looked it over?

A. Well, I mean, that I obtained a knowledge of the land.

Q. How did you obtain your knowledge,—what did you do?

A. Well, I first identified the land by a corner, and then I passed over it so as to obtain a knowledge of the timber that was on it, if there was any, and the soil and topography, and all the facts that would affect its value.

Q. Did you locate all the boundaries at that time?

A. No sir,—what do you mean by locating all the boundaries?

Q. I mean just what I say, did you find all the boundaries?

A. I went to all the corners.

Q. Did you find the corners?

A. Yes.

Q. Did you find the corners at that time?

A. Yes.

Q. Did you find all the corners?

A. No, I did not look for all the corners.

Q. How many corners did you look for?

A. Well, I do not know as I really identified but one corner.

Q. You identified one corner?

A. Yes.

Q. And from that you took your bearings and went on?

A. Yes, I passed over it, keeping my bearings, with a compass.

Q. You cannot recall, I suppose, the next time after this more complete examination that you made,—you do not remember the date I suppose?

A. I do not know that I ever made a more complete examination.

Q. The next time that you made an examination, casual or complete?

A. The next time that I went out there I probably went out to see that there was no trespassing and likely I may have had some other business that took me there also.

Q. You took passing notice of this land as you went along?

A. Yes, to see that it was not disturbed.

Q. Was that generally the way that you looked at it?

A. Yes, but another time, in particular, I was sent out there to ascertain how much wood this man had cut, an dwhat had become of it,—this man that had been granted permission to cut wood on it,—that was more particular.

Q. Other than that time the examinations that you made were just superficial examinations to see that nobody was on it?

A. To see that no one was on it. I considered that it was my duty to look after it.

Redirect Examination.

(Questions by Mr. W. D. FENTON).

Q. Was this land capable of grazing?

A. I know there was some grazing on it.

Q. Did you ever observe any stock of any body's running at large upon this property, grazing or using it?

A. I do not know that I did.

Q. Counsel asked you, if this land was not an open common, so that everybody could run over it, and could have used it,—what is the fact as to whether it was occupied or used by anybody except with the permission of the company?

A. It was not occupied or used by anyone that I know of.

Q. That is, except by the company?

A. That is all.

Q. What was the object of making this appraisal that you made, when you stated that you appraised it at \$250 an acre,—do you know what the object of that appraisal was at that time?

A. Well, I suppose it was to ascertain the selling value of the land.

Recross Examination.

(Questions by Mr. HENRY CONLIN).

Q. You say not occupied by anybody, except the company, Mr. Britt?

A. Yes.

Q. The company was not occupying the land,—the company did not occupy the land any more than anybody else?

A. Well, the company was not living on it.

Q. They were not occupying it?

A. Well, they occupied it in a sense that they did not allow trespassers on it. I was sent to examine it for that purpose.

Counsel for defendant moves to strike out the answer of the witness as not responsive to the question and as a conclusion of the witness.

The WITNESS: I do not mean that they were living on it.

Q. They were not occupying it,—there was no actual possession of it,—there was nobody on it and nothing there that was calculated to make any use of?

A. That was my understanding of it that no one was in the actual possession of it, otherwise I should not have went and examined it.

Counsel for defendant moves to strike out the answer of the witness as not responsive to the question.

Q. Was there any building —were there any evidences of a habitation, or any evidence of anybody being upon this land?

A. No one was living upon it.

Q. Can you answer my question,—was there any evidence of any person or anything except a lot of stumps and second growth timber on this land anywhere?

A. That is what I reported that this was stump land and nobody was living on it.

Q. Did the company ever fence it?

A. There was a fence on part of it,—it was partially enclosed with a fence.

Q. That is not responsive to my question.

A. You asked me if there was any fence, or any-

thing of that kind on the land.

There was a fence at the southern boundary?

A. Yes.

Q. That belonged to the adjoining owner?

A. I do not know who it belonged to.

Q. Did the railroad company ever make any use of of the land whatever?

A. Yes, they did.

Q. What?

They granted permission to a party to cut wood on it for a consideration.

Q. I mean did the railroad company itself ever make any use of the land, or cultivate it or deal with the land in any way, except to give somebody permission to cut timber from it,—but did the railroad company itself do anything with the land for a road way, or for their right of way, or for shops or for ware houses or for any other railroad purpose?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and because nobody claims that the railroad company lived on the land, or that they ever used it for right of way, or that it did any more than any other owner would do.

A. You asked me if the railroad company made any use of it?

Q. Yes.

A. Well, they did not make any use of it, except of the wood that I know of,—no use of it, except the wood, they gave permission to a party to cut the wood.

Q. To somebody to cut the wood?

A. To cut the wood, and they took pay. They sold the wood on it and received pay for it.

Further Direct Examination.

(Questions by Mr. W. D. FENTON).

Q. You went on the land for the purpose of looking after it?

A. Well, I always looked over it when I was in that vicinity.

Q. That was part of your business?

A. Yes

Q. As an employee of the company?

A. Yes

Q. And was it, or not, part of you duty as an employee to report any trespass that you might find on this land?

A. Yes, sir, that was part of my duties.

Further Cross Examination.

(Questions by Mr. HENRY CONLIN).

Q. How many times did you see the land before you went into the employ of the company?

A. My first knowledge of it was in 1889 or 1890, probably.

(Witness excused).

E. S. ELLIOTT is called as a witness for the complainant, and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON).

Q. State you name, age, residence, and occupation.

A. My name is Edward S. Elliott, I am sixty-seven years of age, occupation engineer,—I live in Southern California.

Q. When did you first become connected in any way with the Oregon Central Railroad Company which preceded the Oregon and California Railroad Company, or with A. J. Cook and Company, or with Simon G. Elliott, or with Ben Holladay and Company?

A. In 1866.

Q. Now Mr. Elliott when did you first become connected with the construction of a road known as the road from east Portland to Oregon City when it was under construction by Simon G. Elliott and Ben Holladay?

A. We left San Francisco the first day of April.

Q. Who do you mean by "we"?

A. My uncle and father and the chief engineer,—a man by the name of French.

Q. Who was your uncle and who was your father?

A. S. G. Elliott was my uncle, and Gardner Elliott was my father.

Q. Where did you come,—to what place did you come?

A. Portland.

Q. What did you start to do?

A. We broke ground over here in Steven's Addition. ---I think it was along about the 15th of April,—it was along in there.

Q. In what year?

A. In 1868.

Q. It was April 16th?

A. Well, along about the 15th or 16th.

Q. Now, what was this ceremony of breaking ground that you refer to?

A. Well, when they got ready to operate they just went over there and just shoveled up a little dirt and broke ground and went on.

Q. That was for the Oregon Central Railway Company?

A. Yes.

Q. Now, from that time on in what capacity, if at all, were you employed by any of these people,—what did you do?

A. Well, I afterwards worked in a surveying crew.

Q. Surveying crew?

A. Yes.

Q. Go on and state what you did?

A. When business would slack up and they would discharge any of their crews on the road,—of course being a relation of my uncle and father, they found me something to do,—put me in to keep time, maybe of some crew that they would keep.

Q. I show you a blue print, plaintiff's exhibit 1 of township 1 south, range 2 east upon which is indicated lots 5 and 6, and the east $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 29, township 1 south, range 2 east in Clackamas County, Oregon; being cash entry 641 of James Grindley and also immediately south of that, cash entry 693 of G. Elliott, being the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 32, in township 1 south, range 2 east of the Willamette Meridian, and I will ask you if you recall who G. Elliott is, that is referred to there?

A. That is my father.

Q. That was Gardner Elliott?

A. Yes.

Q. Now when if you recollect was that land entered up or settled upon?

A. Well, as to that, I cannot say, because I was out on the road, you know.

Q. Was it during that time?

A. Yes sir.

Q. Did you know James Grindley?

A. Yes sir.

Q. Now, apparently James Grindley owned 149 acres in section 29, immediately north of your father's tract?

A. Yes.

Q. Did you know of the fact of his taking up that land?

A. Do you mean Mr. Grindley?

Q. Yes.

A. Well, I heard that he took it up,—I do not know anything only hearsay.

Q. What was the fact as to how it was known in that vicinity?

A. Well, it was supposed to be taken up for the purpose of getting the timber,—for sawing timber and ties for the railroad.

Q. Now, I will ask you to state what the fact is, if you know as to when Ben Holladay came, and went into partnership with your uncle, Simon G. Elliott,—about what time in 1868?

A. Well, I think it was in the latter part of 1868. We had been working on the grade and the first thing we

knew, my uncle came out and said he had sold out part of his interest to Ben Holladay.

Q. Now, after that time what was the name by which the business was known?

A. Well it was under the name of the Oregon and California Railroad Company, Ben Holladay President.

Q. Well, the Oregon and California Railroad Company was incorporated on the 17th of March, 1870, and the firm of Ben Holladay and Company was formed on September 12th, 1868,—now what I am getting at is in whose name was the construction work carried on, — was it in the name of Ben Holladay and Company, or in whose name was it?

A. Yes, Ben Holladay and Company.

Q. What do you know, Mr. Elliott, about some saw mills that Ben Holladay and Company operated,—to saw the railroad material out for the construction of this first twenty miles,—where were those saw mills located?

A. Well, saw mill No. 1 was located right over here in East Portland.

Q. At the car shops?

A. At the car shops, and the old mill was afterwards torn down and turned into a machine shop after we got through sawing timber, and they used that machine shop until of late years they built a new work shop. But they built and run quite a number of those mills. There was mill No. 2, I think that was about two miles and a half or three miles south of Milwaukie.

Q. That was on the south side and the west side of the railroad track?

A. Yes.

Q. Whereabouts was mill No. 3?

A. Mill No. 3,—after they had got out No. 2,—got the timber pretty well cut out, they went out and got this tract of land out in back of Milwaukie.

Q. That was the land that I have described?

A. Yes. He went and bought that land for the purpose of getting the timber and ties for the railroad, and he went out there,—and when he went out there, it was so thick that you could not get a dog through the brush hardly.

Q. Was it large fir timber?

A. Yes, very large timber.

Q. What mill was put on this land?

A. Mill No. 3.

Q. Who constructed that mill, and who operated it, and what was it for?

A. Father built the mill. It was for Ben Holladay and Company, and there was nothing sawed there, but just large timber and ties.

Q. What were they used for?

A. For constructing the railroad.

Q. Do you recall Mr. Elliott, when the first twenty miles of that road was finished?

A. No, I cannot.

Q. Do you recall the circumstances of their having a Christmas celebration about December 25th, 1869?

A. Yes, I recollect they had a celebration.

Q. Do you remember how much they had built by the 25th of December, 1869?

A. No, I cannot, because there was a long stretch up

in there that they had hard work to get it finished up.

Q. Now, how long was that Mill No. 3, which was on your father's place there operated in connection with the timber that was on it,—about how long?

A. Well, I cannot say as to that. It was kept there just as long as there was timber.

Q. What is the fact as to whether or not Ben Holladay and Company, about that time also acquired the Grindley tract?

A. Yes, that is what I heard.

Q. And what is the fact, if you know, about there going and cutting the timber off that tract?

A. Yes, they cut the timber off that tract.

Q. What became of that,—what was that for?

A. For timber and ties.

Q. For this same railroad?

A. Yes.

Q. Now, what is the fact, if you know, as to whether or not the timber and material,—bridge timbers etc. that were cut from these two tracts of land were used in the construction of this first twenty miles of road?

A. Yes.

Q. I suppose Gardner Elliott, your father, is dead?

A. Yes.

Q. Is Simon G. Elliott, your uncle, dead?

A. Yes.

Q. How long has your father been dead?

A. Father died about the 27th or 29th of August, 1879.

Q. When did Simon G. Elliott die?

A. Simon G. Elliott died, I understand, about a year

and a half ago.

Q. Where is James Grindley,—is he dead?

A. I cannot say.

Q. Was he a single man or not?

A. He was at that time.

Q. Your father was a married man at that time?

A. Yes.

Q. I show you complainant's exhibit 2, and call your attention to the figure on that exhibit showing the location of an old saw mill near the middle or center of that eighty of your father's, and I will ask you what your independent recollection is as to about where that old saw mill was located?

A. This is the way he went from Milwaukie. (showing on map.) I think I recollect this as you go up from Milwaukie,—that is just about the location of the mill.

Q. That is about the place where you judge the mill ought to have been?

A. Yes. Father built him a shanty up northwest of the mill site.

Q. Is that where he lived?

A. He lived there all the time on the tract while they were cutting timber, and staid there until they sawed the timber up when he left there, then my mother came out.

Q. What kind of a mill was that?

A. Oh, just a rough mill,—a board mill,—saw mill.

Q. Do you have any recollection of about how long it remained there?

A. No, I cannot tell. They had a big body of timber there, and it staid there until they sawed it all up.

Q. When were you last on this land, Mr. Elliott,—do you recollect?

A. I cannot tell you that because when I would come down to Portland when work got slack, naturally I would go down and see them, when I would go back to work, and the next time I would come, I would go out and see them.

Q. You have been frequently on this place?

A. Yes, hundreds of times.

Q. Have you been frequently over the Grindley place?

A. Yes.

Q. Do you recall, Mr. Elliott, what fencing, if any, was put on this land at any time,—do you remember about any fencing?

A. Well, I know that a party who lived adjoining, I do not know his name,—on the south,—he made a little fencing,—he got the lumber from the mill to fence up a piece he had there.

Q. A fence on the line?

A. A fence on the line.

Q. That was in 1868 or 1869?

A. Yes, somewhere along there.

A. Now, what fencing was there on the Grindley tract on the north?

A. That I cannot say.

Q. Do you remember whether there was a fence on the west of your father's land?

A. I cannot say that, because I never went out that far.

Q. And on the east during that time, do you re-

member whether there was a fence on the road there?

A. I cannot say that.

Q. Now how did they get these ties and bridge timbers etc. out to the railroad track?

A. By team.

Q. Did you know A. M. Elam, one of the teamsters, one of the teamsters that used to live over in East Portland in 1868 or 1869, '70 and '71?

A. Not that I can bring to recollection now.

Q. You have no recollection of him?

A. No, I might have known him.

Q. You knew Jacob Wills that used to live at Milwaukee?

A. Yes.

Q. When did you retire on a pension, Mr. Elliott?

A. About three years ago.

Q. After you ceased to be a member of the construction gang, did you become a locomotive engineer?

A. I went up and run a saw mill at Canemah for about a year.

Q. What year was that?

A. I think that was in 1879.

Q. Now, after these mills were discontinued and not used by Ben Holladay and Company for the railroad company, do you know what became of them, that is, mill Nos. 2, 3, and 4?

A. No, I do not know what became of them,—I do not know whether they sold them or what they did with them.

Q. Well, do you recall,—just to refresh your memory do you recall the circumstances of Ben Holladay and

Company turning one of the mills over to the railroad company put in machinery for George Weidler, and they started, and they started a saw mill?

Counsel for defendant objects to the question as leading, and as incompetent, irrelevant, and immaterial.

A. Well, since you have spoken about it, I knew from hearing that there was a mill turned over to George Weidler, but that is all I know.

Q. Do you know who George Weidler was?

A. George Weidler was supposed to be secretary or financial man for Ben Holladay for Ben Holladay.

Q. Do you, or do you not recall that George Weidler was purchasing agent for the Oregon and California Railroad Company?

A. Yes, he was purchasing agent,—he was what you might say,—general boss.

Q. Do you remember when Mr. Koehler came to Oregon in 1874, that Ben Holladay was in charge of these properties?

A. Yes.

Q. Do you remember the circumstance of Mr. Koehler coming here from Germany?

A. Yes.

Q. As a representative of the bondholders?

A. Yes, sir.

Q. That was in 1874?

A. I do not recollect what year it was.

Q. Now, after 1879, when you and your father went out of the mill business, what did you do?

A. Well, I got married during that time, and my

wife thought the saw mill was too dangerous, and I made application to go on the road as a fireman.

Q. Who was superintendent during that time?

A. J. W. Brandt.

Q. What was L. R. Fields doing at that time?

A. He was clerk in the East side office, I believe.

Q. Telegraph operator?

A. Yes.

Q. Now, what time was it that you became a fireman on this road?

A. That was in 1879,—the latter part of 1879.

Q. And how long did you act as fireman?

A. Three years.

Q. Then what did you become?

A. They promoted me to an engineer.

Q. And for how long were you an engineer?

A. For about twenty-eight years.

Q. And upon what line did you operate as engineer?

A. The Southern Pacific.

Q. On its lines in Oregon?

A. Yes sir.

Q. Did you also operate on the west side here?

A. Yes, I would run over here once in a while, but my regular line was on the east side.

Q. On the main line?

A. Yes.

Q. Did you have a passenger train, or what kind of a train?

A. Mostly a passenger train.

Q. When was it that you retired?

A. Between three and four years ago, they retired me.

Q. You are not now in the employ of the company?

A. No.

Q. Are you doing any business of any kind?

A. No sir, I am not able.

Q. What is the condition of your health?

A. Well, I am just able to get along, that is all.

Q. You have no affliction of any kind?

A. Rheumatism. Yes, I was knocked down by a team here on Fourth street. They knocked my right eye out, and fixed this whole side so I have no use of it. (showing.)

Q. That was when?

A. That was about two years ago, after I quit work.

Q. And since that time you have been more or less an invalid?

A. Yes.

Q. You met with this accident after you retired?

A. Yes. I never had a scratch in my life when I was railroading, and I came out here and let a team knock me down.

Cross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. Mr. Elliott, you testified in your examination in chief that your father made the cash entry on this land for the purpose of securing the timber.

A. Did I say he made a cash entry?

Q. Well, I understood he made a cash entry,—he took it up?

He took it up for the purpose of getting the timber for the ties.

Q. Do you know that of your own knowledge, or is

that just what somebody told you?

A. Well, I know it, just because my father told me, that is all the reason I know.

Q. Your father told you?

A. Yes.

Q. You have no other knowledge?

A. No. I was nothing but a boy then, and he told me about it.

Q. When you say that the timber was all taken from this tract and was used for ties and heavy timber for the construction of the railroad, you mean to say that you know that of your own knowledge, or was that information conveyed to you by some one else?

A. Well, I know it from my own knowledge because I was off and on there so many times, and I would see them hauling the timber out very often, and I saw the teams along the track, and I saw them put them on the car, where they were hauled out along the road, and were put down,—I saw that time and time again.

Q. And you saw this mill in operation there, did you?

A. Yes sir.

Q. What kind of mill was it? Was it what they call a portable mill,—a small mill?

A. It was a saw mill built in there,—father went in there and hewed.

Q. Was it a portable mill?

A. I cannot say.

Q. It was a small mill that could be moved about?

A. Yes, you could move any mill.

Q. It was just a mill that you could haul about?

A. No, as I undertsand a portable mil lis a mill that has a boiler and machinery, and everything together so you can move it or drive it off like a wagon,—this was not one of that kind.

Q. Was it a large mill or a small mill?

A. It was a large mill.

Q. It was a mill that could be easily moved?

A. Yes.

Q. It was not a machine that was permanently built?

A. No, it was just a mill that was built there before they put the siding and roof on, my father sawed the lumber out and built these different houses for the men around there, and a blacksmith shop.

Q. I submit that is not an answer to my question, I asked you in regard to the building which was built over the saw mill,—was that a permanent building, or was it a rude shed,—just a temporary building?

A. Just a mere temporary building.

Q. Now you say this mill was later on turned over to George W. Weidler.

A. Part of it.

Q. And went into the construction of a mill that he built?

A. I heard that it did.

Q. You do not know that it did?

A. I believe that father told me that it did. If a man cannot believe his own father, he cannot believe anybody.

Q. That is very true, but your father might have been mistaken.

A. No, I do not think he was.

Q. Well, whether he was or not, at what time did your father tell you that?

A. Well, it was along about 1878,—along in there before we went to Conemah.

Q. In 1878?

A. Somewhere along in there.

Q. He told you this old mill,—this No. 3 mill had been dismantled, and the machinery taken out?

A. Yes, I know that it was dismantled for I know my mother broke up housekeeping, and my father said they were going to move the mill, and he told me where they were going to move it to, and my mother came to Oregon City, and we were settled there then for quite a while, working in Oregon City.

Q. How did you get the information about No. 1 and 2 mills?

A. I did not say anything about No. 1 and 2.

Q. I understood you to say that these saw mills were turned over?

A. I did not say that. I was only talking about mill No. 3. Father told me about No. 1 that the machinery was used here for the company to run a machine shop for the railroad company.

Q. Then it was only mill No. 3 that you referred to as having been turned over to George W. Weidler?

A. I referred to mill No. 3.

Q. That was the mill your father told you about?

A. Yes.

Q. You are still a pensioned employee of the company?

A. Yes sir.

Redirect Examination.

(Questions by Mr. W. D. FENTON.)

Q. Counsel asked you if you were a pensioned employee of the company,—you do not mean by that that you are now in the company's employ?

A. No, they just pensioned me.

Recross Examination.

(Questions by Mr. HARRY CONLIN.)

Q. You are still drawing monthly pay from the company?

A. They pensioned me as long as I live and behave myself, I guess.

Further Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. Did you know, Mr. Elliott, William Showers?

A. Yes. Well acquainted with him.

Q. Is William Showers living or dead?

A. He is dead.

Q. When did he die?

A. I cannot tell you exactly, I was up the road when he died.

Q. Do you recall the circumstance that your father in 1868 or about that time had some dealings with William Showers, about leasing the timber on this land to cut the timber off?

A. To cut the timber off, yes.

Q. Do you have any recollection about that?

A. No.

Q. I noticed in the records of Clackamas County a lease executed to William Showers for a consideration of \$10.00, dated November 19th, 1868, recorded Decem-

ber 2nd, 1868, on page 15 of Book 3 of the records of deeds of that county which lease was assigned to Ben Holladay and Company and contained this clause:—"This instrument is a lease to cut and take all the fir timber on the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section No. 32 in township 1 south, of range 2 east of the Willamette Meridian, and to erect a mill thereon," and then on the 5th day of October, 1869, Gardner Elliott and Betsey S. Elliott, his wife executed a deed to Ben Holladay and Company conveying this same land which is recorded at page 239 of Book G of the record of deeds of Clackamas County, Oregon,—have you any independent recollection of that transaction between Showers and your father, and Showers and Ben Holladay and Company?

A. No, not in regard to that. I know that father gave Showers the first job that he ever had in Oregon.

Q. What to do?

A. He was foreman of the Clackamas bridge,—for the framing of the Clackamas bridge.

Q. When was that?

A. That was in 1869.

Q. The railroad bridge do you mean?

A. Yes.

Q. Then he worked on the railroad bridge?

A. Yes.

Q. Under your father?

A. Yes.

Q. Who was your father working for?

A. For Ben Holladay and Company,—or the Oregon and California Railroad Company.

Q. At that time it was Ben Holladay and Company and the Oregon Central Railroad Company?

A. Yes sir. The railroad company have changed hands so much that I cannot keep track of them.

Q. There has been something said about a mill No. 4,—was there a mill No. 4?

A. Yes sir.

Q. Where was that?

A. That was built right on the edge of Milwaukie.

Q. Which side of the track?

A. On the east side.

Q. How far from the track?

A. I suppose about a hundred feet.

Q. Was that mill operated by Ben Holladay and Company?

A. Yes.

Q. For the same purpose as these others?

A. Yes, they sawed nothing else but just ties and timber.

Q. Now, counsel has asked you if mill No. 3 was a temporary portable mill,—how large a cut per day was that mill, about?

A. I suppose to crowd it that the mill would cut from twenty-five to thirty thousand feet per day.

Q. About how many men were there working at that mill?

A. Well, I think father had as many as seventy-five men counting the log cutters, teamsters and everything, there was a good many teams hauling this bridge material and ties and railorad material to the track for construction purposes. I cannot say as to the number,

but I know that they hired all the teams that they could get. They could not haul very big loads over there the way they hauled it.

Q. I show you, which, for the purpose of identification, may be marked complainant's exhibit No. 3, being a pay roll, or time roll of the employees of mill No. 3, which appears to be the original pay roll, and at the top of the page is the name of Gardner Elliott; and at the top of page 5 there, under the heading "Received payment" is the name of Gardner Elliott. That was for the month of January. And I show you also, at pages 10, pay roll of saw mill No. 3, for the month of February, 1869, the top line "Elliott, wages \$200 per month," and the signature "Gardner Elliott," and I will ask you if that is the signature of your father?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because it is an attempt to inform the witness about matters about which he has no personal knowledge from a paper that is not in evidence, and is not authenticated, and does not appear to be competent, relevant, or material to any issue in this case, and because there is no foundation laid for its introduction.

Mr. Fenton, counsel for complainant will offer this original pay roll as a part of the testimony of this witness.

Counsel for defendant objects to the same as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid for its introduction. The document referred to is received and filed in evidence marked "Complain-

ant's Exhibit 3."

A. Yes, that is his writing.

Q. Do you know his handwriting?

A. Yes, I do.

Q. Is that his signature?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because it is an attempt to inform the witness about matters which are not within his personal knowledge, and because no foundation has been laid for the evidence.

A. Yes sir.

Q. I will show you on page 19 of this same book, being time of saw mill No. 3, for the month of March, 1869, at the top line, "Gardner Elliott, 27 days \$200 per month, total amount \$200," and what purports to be the name of Gardner Elliott under the word "Received Payment" and will ask you whose signature that is?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, because no foundation has been laid.

A. That is father's signature.

Q. I show you page 22 of this same book, being time of mill No. 3, for the month of April, 1869, and the words, "Gardner Elliott, 26 days, @ \$200, total amount \$200," and under the heading, "Received Payment," the name of "Gardner Elliott," and I will ask you whose signature that is?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the

best evidence, and because no foundation has been laid.

A. That is father's signature.

Q. In this same book, just a little below, is this entry, "James Grindley, 26 days, \$80 per month, total amount received, \$80," and under the heading "Received payment," is the name "James Grindley," do you, or do you not know, the signature of James Grindley?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. No, I do not.

Q. Was he, or was he not, working in that mill?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. He was.

Q. I call your attention to page 27 of this same book,—time of saw mill No. 3, to the name of Gardner Elliott, for the month of May, 1869, under the heading, "Received payment," and the signature "Gardner Elliott," and will ask you if you recognize that signature, and if so, whose it is?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. Yes, it is father's.

Q. I call your attention to page 28, being time

book of saw mill No. 3, for the month of June, 1869, and to the name "Gardner Elliott, \$200," and under the words "Received payment," the signature "Gardner Elliott," and will ask you whose signature that is?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. Father's.

Q. I show you the time of mill No. 3, for the month of January, 1869, and to the entry under the name of Gardner Elliott "26 days, wages per month, \$200, total amount \$200," and the signature "Gardner Elliott," and an X between the names, and will ask you whose signature that is?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. That is not father's.

Q. You do not know whether that X was made by him or someone else?

A. No sir.

Q. But these others are all his signatures?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. Yes sir.

Q. I notice in line 3 of page 6 and entry under the

name "James Grindley" the signature "James Grindley" per G. Elliott—" that is not in your father's handwriting, is it?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. No sir.

Counsel for complainant offers in evidence pages 6, 10, 19, 22, 27, and 28 of the pay roll and time book referred to, and asks to have the same marked plaintiff's exhibit 3, and particularly the lines identified by the witness, and the signatures of Gardner Elliott, and asks permission to withdraw the original book and have the examiner make a copy of these pages offered and to substitute the copy in lieu of the original as complainant's exhibit No. 3, and counsel for complainant further offers to show and will show that this book and each of these pages offered were among the corporate records of the Oregon and California Railroad Company, and in its custody, and that it was received from the Oregon Central Railway Company as part of the corporate records of that company, and that it has been continuously in the possession of the secretary of the Oregon and California Railroad Company since the date of the deed from the Oregon Central Railway Company to the Oregon and California Railroad Company, and that it is now in the custody of the secretary of that company.

Counsel for defendant makes an objection to the withdrawal of the original and the substitution of a

copy to be spread upon the records by the examiner, but objects to the introduction to the same in evidence on the ground that the testimony offered is incompetent, irrelevant, and immaterial, and is not the best evidence, and as not having been duly authenticated, or the entries in it shown to have been made by any person authorized to make them for the Oregon Central Railroad Company, or for Ben Holladay and Company, and because it is not addressed to any issue in this case, or to any cause of suit alleged in the complaint. It is agreed that a copy of the pages offered in evidence may be made by the examiner, and that the original may be withdrawn. The copy to be marked complainant's exhibit 3.

Cross Examination.

(Questions by Mr. HENRY CONLIN.)

Q. You stated with reference to the capacity of the saw mill there that it was twenty-five to thirty thousand feet per day if it was crowded,—did you ever know for any one day what was the output of that mill?

A. No sir.

Q. That was some forty-two or forty-three years ago that the mill was in operation according to this book,—January, 1869,—so that when you made that statement as to the mill being able to cut twenty-five to thirty thousand feet per day, if it was crowded,—that is largely a guess on your part?

A. No, sir, no guess work.

Q. Just your impression?

A. Not my impression, because father used to say when I would be at home that the mill had cut so much that day that it was a daisy mill and that is how I got my information.

Q. You recollect that forty-three years?

A. I do.

Q. You stated a little while ago that there were seventy-five men employed at the mill, and I find on this book that the highest number of names at any one time is thirty-three men,—does not that refute your statement?

A. No sir. These are the men that father had under his control, there was other men there, there were the men that had charge of the ox teams, and the hauling.

Q. That, is, you think there were men employed that were not on this pay roll?

A. Mr. Fenton asked me the number of men employed around the mill, and my answer covered the men that were in the timber, the logging men, and the teamsters hauling ties and timber for the railroad company, and to take them all, I believe there was from seventy to seventy-five men working there.

Q. This a mere hazy idea of yours after this lapse of time,—you do not mean to be understood that you are at all clear about the number?

A. I do.

Q. You do?

A. I do. I will say that there was at least sixty-five men employed around in that camp in one way or an-

other. I will cut it down ten, and I will say that there was sixty-five men employed around that camp.

Q. You think it would cut twenty-five to thirty thousand feet per day, because your father told you that it was a daisy mill?

A. Yes sir.

Redirect Examination.

(Questions by Mr. FENTON).

Q. You are a saw mill man yourself?

A. Yes.

Q. You have some knowledge of the cut of a saw mill by seeing it?

A. I have

Q. You have seen other mills in operation?

A. Yes.

Q. Now from looking at this mill and from your knowledge of the saw mill business, what in your judgment would this independent of anything your father told you?

A. Well, I should judge from what experience I have had in saw mills and in sawing timber that it would saw about twenty-five, maybe thirty thousand feet a day, when they were sawing heavy timber. When they were sawing six inch stuff, they wouldn't saw that much.

(Witness Excused).

A. N. Wills is called as a witness for the complainant, and being first duly sworn, testified as follows:—

Direct Examination.

Questions by Mr. W. D. Fenton.

Q. State your name, age, residence, and occupation.

A. A. N. Wills, fifty-one years old, brick manufacturer, residence 475 Spokane Ave., Sellwood.

Q. Then you were born in 1860?

A. Yes sir.

Q. Where were you born, Mr. Wills?

A. At Willsburg.

Q. Where is that?

A. Well, that is just east of Sellwood, you know where Sellwood is, I presume.

Q. Who was your father and uncle?

A. My father was Jacob Wills, and my grandfather was George, who had a donation land claim, just east of Willsburg.

Q. I call your attention to complainant's exhibit 1, being a township plat of township 1 south, range 2 east of the Willamette meridian in Clackamas County, Oregon, and to the tract of land this side as lots 5 and 6 and the east $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 29, township 1 south, range 2 east, being the tract known as cash entry 641 of J. Grindley, and to another tract of land, described as the north $\frac{1}{2}$ of the northeast quarter of section 32, township 1 south, range 2 east, of the Willamette meridian, and known as cash entry 693 of G. Elliott, both of which tracts are shown on this blue print lying east of the claim known as the donation land claim of Hector

Campbell, and Daniel Hathaway, and about two or three miles, I should say, east of and about a mile and a quarter northeast of the nearest point of the present railroad track, and I will ask you if you know those two tracts of land by these names?

A. I do not think I would know them,—I do not know the section lines and townships.

Q. Do you know them by the names of James Grindley and Gardner Elliott?

A. I have heard of those names and I know where the Hector Campbell place is.

Q. Now, you were about nine years old, in 1869?

A. Yes sir.

Q. Have you any personal recollection of a sawmill that was called saw mill No. 3, upon any of this land in 1869?

A. As I remember there were four mills. No. 1 was at the carshops and mill No. 4 was about a quarter of a mile from Milwaukie, and No. 2 was about two miles I should judge east of Milwaukie.

Q. Across a flat?

A. Across a flat, and No. 3 was just about due north I should say from No. 2, right about, I should think, on a straight line,—probably two miles east of Milwaukie station,—not any more than that.

Q. Straight east from Milwaukie?

A. Yes.

Q. How far from the nearest point to a railroad track?

A. I should think not much over a mile, I do not know as I ever was up there on that particular road but I know

that the railroad bears to the southeast after leaving Milwaukie station, and just before it comes to Milwaukie station.

Q. Now, do you know, Mr. Wills, what company, or what concern operated these four mills in 1869?

A. Well, it was the Ben Holladay company.

Q. Called in this record Ben Holladay and Company?

A. Yes.

Q. Do you know who they are?

A. No, I do not. Ben Holladay was the only one I ever knew of.

Q. Did you know Gardner Elliott, the father of the last witness?

A. No.

Q. Did you know the Simon G. Elliott?

A. No.

Q. Now, were you ever on this land where this Mill No. 3 was at the time the mill was running?

A. Well, I have been around there, but I never was in the mill. I was in mill No. 4, I used to go to school in Milwaukie, and I used to go by Mill No. 4 very often.

Q. Mill No. 2 was about how far from the railroad?

A. About three hundred feet on the east side of the track.

Q. Were you ever by Mill No. 3?

A. Yes, I was by there when I was a kid.

Q. I show you complainant's exhibit 2, which purports to be a tracing indicating the boundaries of the Gardner Elliott eighty, and the boundaries of the Grindley 149 acres, and indicating the location of the road to Oregon

City on the east side, and a diagonal road across the eighty, and a new road on the section line,—do you know about those roads?

A. Yes, I know the road I was over there.

Q. About when was this section line road opened?

A. Well, that is a new road and has not been opened but a few years.

Q. I call your attention to what is called a diagonal road going down to the railroad?

A. That is a road that runs right alongside of the railroad track.

Q. This road leads from this point down towards Clackamas station?

A. Yes.

Q. How long has that road been there if you recollect?

A. That road has been there as long as I can remember.

Q. I call your attention to a character on this plaintiff's exhibit 2, which shows or purports to show an old saw mill location about the center of that eighty east and west, and a little south of the center, north and south, and I will ask you to state what your independent recollection now is as to where that saw mill was at the time it was being operated,—number 3 with reference to that place?

A. As near as I can recollect the location it was about a quarter of a mile west of the road running straight to Clackamas station.

Q. And towards Oregon City?

A. Yes.

Q. About a quarter of a mile west of that?

A. Yes.

Q. Have you any independent recollection as to how long that mill No. 3 was in operation there?

A. No, I cannot say,—only about three years.

Q. What was the mill cutting there, if you know?

A. Well, it was supposed to cut railroad timber. I know one of my uncles was head sawyer, I presume.

Q. What was his name?

A. George W. Wills. I think he was also employed over a saw mill No. 2.

Q. How did they get their ties and railroad timber from Mill No. 3 to the railroad track?

A. It was all hauled by wagons.

Q. What did they use this timber for?

A. I presume it was all used for railroad purposes.

Q. Were they then building the first twenty miles of this road?

A. Yes sir.

Q. Do you know what became of this mill that was there,—mill No. 3?

A. No, I do not.

Q. I wish you would state to the court what the character of the timber was that was on this 229 acres so far as saw timber is concerned from the stumps that are there now, and from your knowledge?

A. Well, it was all pretty large timber,—very good size I should judge.

Q. About how expensive was this land logged off?

Was this 229 acres logged off at the time this saw mill was being operated?

A. Well, I should judge that everything that would go for logs was logged off. There was a lot of wood timber left afterwards.

Q. When did that burn over, do you know about the big fire there?

A. Well, they have had different fires,—I cannot say what year it was. I will say that at the present time you cannot find a great deal of wood there.

Q. What do you know, Mr. Wills, about any fencing on this property,—did you ever know of any old fences there?

A. I never noticed any old fencing there. I have not been over the south end for a great many years. But I know there is some fencing on this new road that runs down through here, (showing on map), I was up there about two months ago.

Q. That fencing has been put there in recent years?

A. Yes.

Q. Do you know who lived on the south of this eighty,—on the N. Phillips donation land claim?

A. I used to know the Phillips, the Phillips claim was just across the lane on the east.

Q. Did you have anything to do with buying some cord wood from this land, if so, when?

A. I bought seventy-five or a hundred cords of wood from this land about 1894 or 1895, I cannot remember the exact date.

Q. From whom did you purchase it?

A. A man by the name of E. T. Hall.

Q. What relation, if any, did he sustain to this land,—how did he happen to sell it to you?

A. Well, he claimed that he bought it from the Southern Pacific, and sold it to me on the ground.

Q. Where was this wood cut?

A. On the south end of the claim.

Q. When you say the Southern Pacific, you mean the Oregon and California Railroad Company?

A. Well, I presume so. I suppose they call it the Southern Pacific, unless they have changed the name.

Q. Well, the Oregon and California Railroad is still living, but it does not operate the railroad?

A. Well, yes.

Q. How extensive was this cord wood cut over this 229 acres at the time you bought?

A. Well, on the north side the timber had been mostly cut off by some persons,—one by the name of Crebs,—that is the north end, and on the south side.

Q. That was in 1894 or '95?

A. Yes, in there somewhere. It was just a year or two after the extreme hard times.

Q. Now, at that time, who claimed to own this land, this 229 acres?

A. I always heard it claimed that the land belonged to the Southern Pacific.

Counsel for defendant objects to the question and answer as calling for the conclusion of the witness and as hearsay.

Q. What knowledge have you, if any, as to whether or

not anybody else ever claimed to own this land other than the Oregon and California Railroad Company to your knowledge?

Counsel for defendant objects to the question as calling for a conclusion of the witness and as hearsay and leading.

A. I have never heard that anybody else ever claimed it until this last year, and then I heard that there was some question as to the title, that is all I ever heard,—that was within the last couple of years.

Q. Did you know Ben Holladay in person?

A. No.

Q. Is your father still living?

A. No.

Q. Is your uncle?

A. He is dead also.

Q. What is the name of this other Wills?

A. David Wills.

Q. What relation is he to you?

A. He is an uncle.

Q. Where was his donation land claim?

A. I do not think he ever had any.

Q. Where is he living now?

A. He lives about a mile east of Willsburg.

Cross Examination.

Questions by Mr. Henry Conlin.

Q. Where do you live now?

A. I reside in Sellwood.

Q. That is south of here?

A. No, Sellwood is part of Portland.

Q. But it is not very far from this land?

A. It is quite a ways,—three miles or three and a half.

Q. Is Sellwood on the Electric line?

A. Yes.

Q. You have known this land for a great many years?

A. Yes.

Q. Have you ever known the Oregon and California, or the Southern Pacific Railroad Company to make any use of the land?

A. They are selling gravel on it that I know of at the present time.

Q. Who are they selling gravel to?

A. I understand the county is buying gravel.

Q. Buying gravel from this land?

A. Yes,—the north part of it is more gravelly.

Q. Do you know of any use that it was ever put to before by the railroad company?

A. I do not think any of it is cleared land.

Q. Do you know of any use that it was ever put to by the Railroad Company for railroad uses?

A. Well, I know they had a mill up there years ago when I was a kid, and I was told by this man, whom I bought the wood from, that he bought the timber from the railroad company.

Q. He had cut the wood then?

A. Yes.

Q. Had he bought the wood from the railroad company?

A. Yes.

Q. Do you know, of your own knowledge, whether he

bought it from the railroad company?

A. No.

Q. You say this saw timber was all logged off years ago?

A. Yes.

Q. About how early was this logging done?—how many years ago?

A. Many years ago.

Q. Was it all logged off in 1869?

A. I cannot say it was all.

Q. I mean the heavy timber?

A. No, I cannot say whether it was all logged off before the mill was taken away, but I think that about all the timber was logged off there at the time the mill was there.

Q. That was in 1869 and '70?

A. Yes sir.

Witness excused.

David Loring is recalled as a witness for the complainant, and having heretofore been duly sworn, testified as follows:

Direct Examination.

Questions by Mr. W. D. Fenton.

Q. Mr. Loring, I show you two papers which have been marked for identification as complainant's exhibit 4 and complainant's exhibit 5, purporting to be a township plat of township 1 south, range 1 east, and township 2 south, range 2 east, upon which is traced in red color the located line of the Oregon and California Railroad Company, as the same is now located on the ground, over

the land described in these two blue prints, and will ask you where you obtained these, if you did obtain them?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, but does not object to the correctness of the plats, or to the fact that they are not certified by the surveyor general.

A. I obtained them from the office of Cowing and Cowing, in the Worcester Building, who make blue prints of maps of Government township plats, showing the entries, and of the records in the local land office for this district.

Q. Are these blue prints correct representations of the township plat of these two townships?

A. So I am informed and given to understand.

Q. You made the tracing of this line of the Oregon and California Railroad on these two exhibits?

A. On this one of two south 2 east I made it from memoranda I secured from Mr. Briske. It is a correct map of the right of way of the Oregon and California Railroad Company and this one of 1 south, 1 east, Mr. Briske had his draftsman put it in.

Q. You saw him put it in?

A. Yes sir.

Q. Are those red lines locating the Oregon and California Railroad Company correctly located as the same is on the ground?

A. So I understand as indicated by the measurements shown of the line of the railroad on the map in Mr. Briske's office.

Q. It is correct according to the official record in the office of the Chief Engineer?

A. Yes sir.

Counsel for complainant offers in evidence the papers shown to and identified by the witness, which purport to show the right of way of the Oregon and California Railroad Company from the initial point of construction in 1868 in East Portland in Gideon Tibbetts donation land claim, and crossing the various land claims of James B. Stevens, and up through township 1 south, range 2 east, in which the land in controversy was situated, and connecting with township 2 south, 2 east.

Same is received and filed in evidence marked complainant's exhibits 4 and 5.

Counsel for defendant objects to the same as incompetent, irrelevant, and immaterial, but makes no objection on account of the same not being certified by the surveyor general.

Q. How far does that take you?

A. About nine miles.

Q. Towards Oregon City from Portland?

A. Yes sir.

Q. Does it take you as far as Clackamas station?

A. I think not. Clackamas station is about a mile further. The road comes on a curve, that is not put in.

Witness excused.

R. B. Hallock is called as a witness for the complainant, and being first duly sworn, testified as follows:—

Direct Examination.

Questions by Mr. W. D. Fenton.

Q. State your name, age, residence, and occupation.

A. R. B. Hallock, age 27, residence, Portland,—499

Yamhill Street, I am employed in the tax department of the Oregon and California Railroad Company and Southern Pacific Railroad Company.

Q. How long have you been an employee of the tax department?

A. Since May, 1895.

Q. Who is your principal?

A. J. W. Morrow.

Q. What is his official title?

A. Tax and right of way.

Q. What are your duties,—what do you do?

A. Well, I am supposed to check and certify to the correctness of the various bills and tax vouchers in Mr. Morrow's department, as well as to the correctness of the vouchers which have been drawn in payment of taxes.

Q. In that way, what is the fact as to your becoming acquainted with the assessment of property owned or claimed to be owned by the Oregon and California Railroad Company, and the amount of taxes levied, and when assessed, and to whom assessed, and when paid, and by whom paid?

A. I am familiar with the assessed value of the land for taxes for these companies, and affiliated companies under Mr. Morrow's jurisdiction for the years from 1896 to the present time.

Q. Including 1910?

A. Yes sir, and of such other matters as I had occasion to investigate.

Q. What is the method that you adopt and pursue to ascertain the assessment of a particular piece of prop-

erty and the amount of taxes for one year, and the payment of the taxes,—just describe the routine.

A. In the spring of each year some time prior to the first of March, we compile and send to the various county assessors an annual return, covering the property owned by the company in our jurisdiction which are liable to assessment, and in the fall of the year when the assessment have been determined,—when the assessed values have been determined, it is my duty to collect these various county assessments, and of course these figures have to be revised, then it is my duty to extend these various revisions of assessed values, and check them against the tax rolls.

Q. I will ask you to state to the court if you know by having investigated the assessment rolls of Clackamas County, as to the east $\frac{1}{2}$ of the southeast $\frac{1}{4}$, and lots 5 and 6, of section 29, north $\frac{1}{2}$ of the northeast quarter of section 32, both in township 1 south, range 2 east, of the Willamette Meridian in Clackamas County, Oregon?

A. Yes sir.

Q. Have you or not made a personal examination of the assessment rolls of Clackamas County, covering the assessment of this property from 1869 up to and including the year 1910, and checked the same off to ascertain the assessed value, the amount of taxes paid, to whom the property was assessed, by whom the tax was paid, and the receipt number where it is given?

A. I have.

Q. When did you do that, and at whose request?

A. At your request this morning.

Q. I show you a paper which for the purposes of identification, may be marked complainant's exhibit 6, which purports to be and it is a certified copy of the tax records of Clackamas County, Oregon, relating to the property described, covering the years from 1869 to 1910 both inclusive showing the assessed value of this property,—the amount of taxes paid, and the name of the personal corporation in whose name the property was assessed, the name of the personal corporation who paid the tax, and the number of the receipt at the time the taxes were paid, and I will ask you whether or not you used this statement in checking up those original rolls, and whether or not you were assisted by any one in that work, and if so, by whom?

A. I was assisted by Mr. Henselman of the tax department, in Mr. Morrow's office, and by the clerk of Clackamas County.

Q. The county clerk?

A. Yes.

Q. And did you use this statement?

A. Yes, of course I compared it with Mr. Henselman.

Counsel for defendant states that so far as the witness in giving his testimony has referred to documents, and incorporated them or any part of them in his answer, defendant objects to the same as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid for its introduction, and because the documents are public records which are authorized by law to be certified and used in evidence.

Q. You did use the statement?

A. Yes, I used the exhibit in checking the figures.

Q. Did you at the time see each original assessment roll in the office of the county clerk?

A. Yes.

Q. And check the same up with this statement?

A. Yes.

Q. And what is the fact as to whether or not this complainant's exhibit 6 is a correct exemplification of these original rolls in the office of the County Clerk of Clackamas County, Oregon?

Counsel for defendant objects to the testimony as incompetent, irrelevant, and immaterial, and not the best evidence, because no foundation has been laid for its introduction, and because the documents are public records, which are authorized by law to be certified and used in evidence.

A. Yes, it is.

Q. And you personally examined the assessment roll?

A. Yes sir.

Q. And you verified it?

A. I verified it.

Counsel for complainant offers in evidence the paper referred to, duly certified.

Counsel for defendant objects to the same as incompetent, irrelevant, and immaterial, and not the best evidence, and hearsay, and because no proper foundation has been laid for its introduction and because it is not a document which is by law authorized to be recorded, or of which a certified copy can be taken or offered in evidence.

The document referred to is received and filed in evi-

dence and marked complainant's exhibit 6.

Q. Now, when did you go to the tax department?

A. In the spring of 1905,—May, 1905.

Q. What personal knowledge have you of the payment of taxes on this property for the years 1906 to 1910, both inclusive?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not within the witness's personal knowledge.

A. I have personal knowledge from and including the year 1908, for the reason that prior to that time I was employed as billing and not held responsible for the checking of the payments.

Q. State what your knowledge is of the time that you do know as to the payment of these taxes?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and because the records themselves are the best evidence.

A. For the year 1908, and subsequent years my duties made it incumbent upon me to check these various counties on the tax rolls which included Clackamas County from 1908 to the present date, and I checked and certified to the correctness of those amounts.

Q. Were they paid by the company?

A. Yes.

Q. Where are the tax receipts for the years 1908, 1909, and 1910, covering this property, if you know?

A. They were sent to the auditor's office in San Francisco, and I suppose they are on file.

Q. You do not know where the tax receipts are for

the preceding years?

A. No.

Q. You have no official knowledge or personal knowledge of the fire of April 18th, 1906, which destroyed the records of the company in San Francisco?

A. Only to the extent of the knowledge gained through correspondence.

Q. In the course of business of the tax department that has been observed since you were there, what regularly became of these tax receipts from vouchers upon which they were based?

A. They are sent to San Francisco for ultimate filing with the auditor.

Q. Was that course of business in effect when you went into the service?

A. Yes.

Q. And from the records of your office, can you say how long that has been in effect?

A. No, I cannot, because I would not know where to ascertain that information.

Q. Where is Mr. Morrow?

A. He is in Olympia, Washington?

Q. Is he there on business?

A. Yes.

Q. When will he return, if you know?

A. I cannot say.

Q. Do you know how this land came to be assessed from 1902 down to and including 1910 in the name of Ben Holladay and Company?

A. No, because my jurisdiction did not extend over

the work at that time.

Q. I notice in this statement it was assessed in 1880 to Ben Holladay, have you any knowledge as to how that came to be assessed that way?

A. No.

Q. I notice in the column marked paid the figures C. R. R. for the year 1885 the number 1181.—what was that number 1181?

A. That is the number of the tax receipt.

Q. The number of the tax receipt or voucher?

A. Yes, the tax receipt number.

Q. I notice the word running all the way down to 1910. What would that indicate?

A. That indicates that the O. & C. railroad company paid the taxes for those years. That receipt shows the payment by the Oregon and California Railroad Company.

Q. I notice that preceding that in 1873 it is assessed to the O. & C. R. R. and under the column marked "Paid by" the roll shows "P," and the word marked "Paid" in the roll "ditto" that runs down that way to and including 1884,—there is nothing in the assessment roll there that would show by whom that was paid?

A. No sir.

Q. That is from 1873 down to and including 1884?

A. Yes.

...

Q. You have no personal knowledge of this land in controversy other than as it appeared in your tax department as land upon which the taxes were being paid by the company?

A. That is the case,—I have no personal knowledge of it.

Witness excused.

Thereupon the taking of the testimony herein is adjourned until tomorrow morning, September 19th, 1911, at nine o'clock A. M.

Portland, Oregon, September 19th, 1911, nine o'clock A. M., at this time pursuant to adjournment appear the parties as heretofore, the complainant appearing by Mr. W. D. Fenton as counsel and the defendant appearing by Mr. H. W. Hogue, and Henry Conklin, her attorneys, thereupon the following proceedings are had, to-wit:

Charles B. Moore is called as a witness for the complainant, and being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. W. D. Fenton.

Q. State your name, age, residence, and occupation.

A. Charles B. Moore, residence, Portland, Oregon, engage in no particular occupation at the present time.

Q. Where do you reside, and where have you resided for the past fifty years?

A. Well, I have resided most of the time at Salem, Oregon, and Portland, Oregon.

Q. Were you acquainted with S. A. Clark in his lifetime?

A. Yes sir.

Q. Did you know S. A. Clark on the 22nd day of April, 1867 and afterwards?

A. Yes sir, I have known him ever since I can remember.

Q. Where did you reside?

A. He resided at Salem at that time.

Q. Where is he now?

A. He is dead.

Q. When did he die, if you remember,—about when?

A. I think it was within the past two or three years,—he died at Salem.

Q. I show you a book which, for the purpose of identification, may be marked complainant's exhibit 7,—purporting to be the minute book of the Oregon Central Railroad Company incorporated April 22nd, 1867, and I will ask you to look at the signature on page three purporting to be the signature of S. A. Clark, Secretary, and on page 23, purporting to be the signature of S. A. Clark, Secretary, on page 24, purporting to be the signature of S. A. Clark, Secretary,—page 31, purporting to be the signature of S. A. Clark,—page 32, purporting to be the signature of S. A. Clark, Secretary,—page 37, purporting to be the signature of S. A. Clark, Secretary,—page 42, purporting to be the signature of S. A. Clark, Secretary,—page 55, purporting to be the signature of S. A. Clark, Secretary,—page 58, purporting to be the signature of S. A. Clark, Secretary,—page 77, purporting to be the signature of S. A. Clark, Secretary,—page 82, purporting to be the signature of S. A. Clark, Secretary,—page 84, purporting to be the signature of S. A. Clark, Secretary,—page 86, purporting to be the signature of S. A. Clark, Secretary,—page 89, purporting to be the signature of S. A. Clark, Secretary,—page 97, purporting to be the signature of S. A. Clark, Secretary,—page 101 purporting

to be the signature of S. A. Clark, Secretray,—page 107, purporting to be the signature of S. A. Clark, Secretary,—pages 110-111, purporting to be the signature of S. A. Clark, Secretary,—page 116, purporting to be the signature of S. A. Clark, Secretary,—page 130, purporting to be the signature of S. A. Clark, Secretary,—page 134, purporting to be the signature of S. A. Clark, Secretary,—and I will ask you whose signature that is that is signed to these minutes in this book, purporting to be the minute book of the Oregon Central Railroad Company of Salem?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

A. That is the signature of S. A. Clark, signed to each one of the pages mentioned in your question.

Q. Do you know that he was secretary of the Oregon Central Railroad Company during that time?

A. Yes sir.

It is understood that all this testimony is subject to the objections of defendants that the same is incompetent, irrelevant, and immaterial, and not the best evidence.

Counsel for complainant offers in evidence the minute book purporting to be the minute book of the Oregon Central Railroad Company incorporated April 22nd, 1867, and particularly pages 1 to 134 inclusive, and ask leave to withdraw the original and substitute a copy of the minutes in lieu thereof to be marked complainant's exhibit No. 7.

Counsel for defendant does not object to the with-

drawal of the original and substitution of the copy, but objects to the introduction of the same in evidence as incompetent, irrelevant, and immaterial, not the best evidence and no foundation laid, and counsel for defendant states in order that there may be no mistake about their objections, that if it is the purpose of counsel for complainant to claim anything on account of the contract that is sued upon in this case conveyed to the Oregon Central Railroad Company the property in question the document plead is not admissible in evidence as a conveyance of real property for the reason that it was executed or purports to have been executed during the time the internal revenue law of June 30th, 1864, as amended by act of July 13th, 1866, was in force, and by section 151 of the act of June 30th, 1864, the document pleaded and referred to, if intended, as a conveyance of real property, was required to be stamped as provided by schedule "B" of that act, and by section 163 of the act of June 30th, 1864, as amended by section 9 of the act of congress of July 13th, 1866, it is not admissible in evidence because of the fact that it does not bear the proper revenue stamps affixed and cancelled, but on the contrary, the document, as pleaded, bears a five-cent revenue stamp, cancelled, which should have been proper only as a civil contract, and not one conveying real property, and therefore, the instrument cannot be admitted in evidence in the United States Court.

The book referred to is received in evidence and marked complainant's exhibit No. 7, and a copy thereof is spread upon the records in lieu of the original, and is

in words and figures as follows, to-wit:—

EXHIBIT 7.

(A) Accounts Audited, 47, 67, 72, 81, 92, 96, 98, 106, 107, 103.

(B) By-Laws, 5, 6, 7, 8, 9, 10, 34, 103-5, 109, 112, 128, 129.

Bonds and Coupons (1st Mortgage) 19, 20, 22, 31.

Boyd Ham n 36, 91.

Breaking Ground 42-46.

Branch Roads 60-69.

Brinck, Welsh & McKay 85, 86, 92, 94.

(C) Committee—Ways & Means 39, 47-8, 53.

“ Executive 39, 48, 53.

“ Finance 39, 47, --8, 52, 67, 72, 81, 83,

“ Finance 39, 47, 48, 52, 67, 72, 81, 83,

92, 96, 106, 107.

Corporation Counsel 49.

Cooke, E. N. 1.

Clarke, S. A. 1.

Cook, A. J. 11, 22.

Contract for 150 miles 13-19, 25-30, 68-70, 7479, 80, 105-6.

Chenowith, F. A. 23, 56.

Conser, Jacob 36.

Contract to Cal. line 50, 58, 59, 60-66.

Chadwick, S. F. 56.

(D) Directors, Election of—2, 23, 35-37, 72, 80.

do Qualifications of 2, 23, 36, 56, 82.

Douthett, J. H. 36.

Depot Sites 86.

- (E) Ellsworth, S. 1.
- (G) Gaston, Jos. 58, 68.
- Gibbs, A. C. 58.
- (H) Henderson, J. H. D. 36, 98.
- Hedges, A. F. 36.
- Humboldt Branch Road 84.
- Holladay, (Ben) & Co. 87-9, 99.
- (I) Interest on Bonds 72, 73.
- (K)
- (L) Loryea, A. M. 36, 91, 94.
- Lovejoy, A. L. 36, 41.
- Land, Grant 67, 73, 100.
- (M) Moores, J. H. 1.
- Moores, J. R. 1.
- Mortgages (1st on 150 miles) 22.
- Mitchell, J. H. 49, 58, 59, 68, 98, 101.
- Miller, Jno. F. 56.
- Meetings of Board 68.
- Machine Shops 80, 81.
- (O) Officers, Election of—3, 38-39, 93.
- Official Seal 13.
- Official Bonds 54.
- Officers, Oath of 56, 83.
- Office of Co. 83.
- (P) Preferred Stock 11.
- Patton, T. McF. 23.
- Parrish, S. B. 36.
- P. T. Company 86.
- (Q)
- (R) Report of Chief Engineer 57, 70, 79, 83.

Right of way 68, 84, 92, 95.

(S) Smith, J. S. 1, 72, 79, 82.

Stock Book 1.

Subscription of Capital Stock by Company 1, 2, 51-2.

Sinking Fund 21.

Stockholders Meetings 32-37.

Sale of Stocks 52-4, 81, 83.

Salaries 53-4, 81, 83.

Suits agst the Comp'y 54.

Smith, S. M. 55.

Santiam Bridge 72.

Smith, Green B. 80, 85.

(T) Trustees (Parrish and Terry) 31.

Town Sites 83.

(U)

(V)

(W) Woods, Geo. L. 1.

Wasserman, Phil 38, 91.

Western Union Tel. Co. 70, 71, 79.

“West Side” R. R. Co. 70, 71.

(Y)

(Z)

(1) Salem, Oregon, April 22nd, 1867.

On the above named day the Oregon Central Railroad Company was incorporated by filing Articles of Incorporation as required by Law.

A meeting of the Incorporators was this day held at which on motion of I. R. E. Morris, ez. the Hon. Geo. L. Woods was chairman and S. A. Clarke, secretary.

There were present in person or by Attorney the fol-

lowing named of the Incorporators, John H. Morris, Hon. Geo. L. Woods, I. R. Moores, S. Ellsworth by G. S. Woods his attorney, J. S. Smith and E. N. Clark by I. R. Moores their attorney and S. A. Clarke.

The Secretary was instructed to furnish and prepare a suitable Stock Book, and the meeting adjourned until one o'clock P. M.

At one o'clock P. M. on reassembling, being called to order, on motion of J. H. Moores the stock was subscribed to the following amount:

Geo. L. Woods, one share.....	\$100.00
I. R. Moores, one share.....	\$100.00
S. A. Clarke, one share.....	\$100.00
John H. Moores, one share.....	\$100.00
J. S. Smith, one share.....	\$100.00
E. N. Cooke, one share.....	\$100.00

On motion of I. R. Moores, Esq., it was Resolved

That the chairman of this meeting be and he is hereby instructed to subscribe the number of Seventy Thousand Shares (2) (70,000) shares) of the Capital Stock of the Oregon Central Railroad Company for the use and the disposal of the Corporation; which having been done, on motion of Mr. Clarke the meeting of stockholders proceeded to waive publication of notice and proceeded immediately to elect a Board of Directors which motion passed unanimously and all the stockholders being present in person or by attorney Govr. Woods was continued in the chair.

On motion J. H. Moores was authorized to cash a vote for the stock subscribed in the name of the company, and

the meeting proceeding to vote for a Board of Directors, the number on motion of J. H. Moores being fixed at Seven. The votes cast being duly counted, it was found that J. H. Moores, Geo. S. Woods, I. R. Moores, E. N. Cooke, J. S. Smith and Samuel A. Clarke were elected as such Board of Directors, by a full vote of the stock subscribed.

On motion the Directors proceeded to qualify according to the laws of Oregon in the following form and manner, C. S. Woodworth a Notary Public being present.

“We whose names are hereunto subscribed, having been duly elected Directors of the Oregon Central Railroad Company, do hereby Severally Solemnly Swear that we will faithfully discharge, to the best of our ability, our duties as such Directors according to law. So help us God.

(Signed)

John H. Moores

Geo. L. Woods

Saml A. Clarke

(3) (Signed)

(3) I. R. Moores

Subscribed and sworn to before me this 22nd day of April,
A. D. 1867.

(Notarial Seal)

(Signed) C. S. Woodworth

Notary Public

The Directors being duly qualified, they agreed unanimously to meet on tomorrow morning, April 23rd, 1867, at eight o'clock to elect permanent officers, and on motion adjourned.

Saml A. Clarke

Secy.

Salem, Oregon, April 23, 1867.

The Board of Directors having met at eight o'clock A. M., pursuant to agreement, Geo. S. Woods being still in the chair, the minutes of yesterday's proceedings were read and agreed to.

The Chairman announced that the election of a President was the first thing in order. Geo. L. Woods, being nominated, received all the votes cast and was declared to be unanimously elected President of the Oregon Central Railroad Company.

I. R. Moores was nominated for Vice President and upon a ballot he received all the votes cast and was declared unanimously elected Vice President.

J. H. Moores was nominated for Treasurer and upon a ballot he received all the votes cast, and was declared unanimously elected Treasurer.

(4) S. A. Clarke was nominated for Secretary and upon a ballot he received all the votes cast and was declared unanimously elected Secretary.

Thaddens R. Brooks was nominated for Engineer and receiving all the votes cast was unanimously elected engineer.

The following By Laws were read and adopted

BY LAWS

of the

OREGON CENTRAL RAILROAD COMPANY

Sec. 1. The fiscal and business year of this company shall commence on the first day of January and terminate on the last day of December of each year, and be divided into four business periods or quarters, terminat-

ing on the thirty-first day of March, June, September and December respectively.

Sec. 2. The annual meeting of the stockholders of this company shall be held on the first Thursday of April of each year at such place as shall be appointed by Resolution of the Board of Directors at which an election of seven directors shall be held, to serve for the ensuing year and until their successors are elected and qualified. In case the said annual meeting for any cause shall not be held on said day, or a majority in value of the stockholders should not be present, some other time shall be appointed within ninety days thereafter.

(5) Sec. 3. No business shall be transacted at any annual or special meeting of the stockholders unless at least a majority in value of the stockholders shall vote in the same. Stockholders meetings may be adjourned from time to time by the assenting vote of a majority in value of the stockholders. Notice shall be published by the Secretary as to the time and place when annual or special meetings shall be held.

Sec. 4. The President, or one of the Directors, with one of the stockholders, shall act as the Judges of Election, receive, count, and canvass the votes and declare the result without delay.

The Secretary shall be the Tally Clerk and keep a regular tally sheet of all votes cast at such election. In the absence of any officer of election, his place shall be temporarily filled by the stockholders present.

Sec. 5. The office of the Company shall be in Salem, Oregon.

Sec 6. Four or more of the Directors shall constitute a quorum for the transaction of business, but no debt shall be contracted unless passed by at least four votes. Special meeting may be at any time called by the President or three members of the Board.

Sec. 7. There shall be elected by the Directors, at the first meeting after the annual election of Directors, from among their members, a President, Vice President, and Treasurer, who (6) shall hold office for the term of one year or until their successors are elected and qualified. They shall also elect a secretary who must be a stockholder.

Sec. 8. The President of the Company shall have a general supervision, subject to the order of the Board of Directors, of the business and the affairs of the Company, and shall preside at all meetings of the Board of Directors, and of the stockholders, when present in person. The Vice President shall exercise all the duties and powers of the President when the President is absent. In the absence of the President and Vice President, a president pro tem may be appointed by the Directors. It shall be the duty of the President to sign all the certificates of stock, and, when so ordered by the Directors, to sign all deeds, bonds, contracts, checks or warrants on the Treasury, or all papers of whatsoever kind or nature, in which the Company is a party.

Sec. 9. The Secretary of the Company shall attend all meetings of the Board, keep a fair and accurate account of all the proceedings and of the stockholders when met for transaction of business and prepare a quarterly and

annual balance sheet at the end of each quarter or year, showing the financial condition of the company, and lay the same before the Board. He shall keep an accurate account with each contractor, and all persons having dealings with the company, and shall also keep an accurate account with each of the stockholders relative to the amount of stock by them held, also to collect all assessments levied, giving his receipt therefore and to receive (7) all dues and receipts of the company from every source and pay over the same to the (7) Treasurer immediately after the receipt, taking the receipt therefor. He shall keep a book of blank certificates of stock, fill up and sign all certificates issued, and shall keep a proper transfer book and ledger in Dr and Cr form showing the number of shares issued to, or transferred by any stockholders with the date thereof. He shall countersign all checks or warrants drawn on the Treasury and all other instruments in writing to which the Company is a party. He shall keep all other books and perform all other duties pertaining to his office.

Sec. 10. The Treasurer of the Company shall take charge of, and safely keep and disburse under the regulations of the Board, all monies, goods, chattels, credits and evidences of debt of every kind belonging to the company into his hands. He shall deliver to the Secretary daily, an abstract of all the receipts given by him on the preceding day. He shall take, keep and carefully preserve all vouchers in favor of disbursements, which he may make by order of the Board. He shall keep and appropriate a set of books, prepared for that purpose,

which shall be at all times open to the inspection of the President and the Secretary or any member of the Board. He shall also render a quarterly and annual account and statement.

Sec. 11. It shall be the duty of the Chief Engineer, to take charge of the surveys, location and construction of the road, and direct the operation of branches of the Engineering Service, (8) Superintend the construction of all work under (8) contract and by himself or assistants direct and control all contractors in the performance of their work. Pass upon or reject all work performed agreeably to contract and report annually and oftener if required, the state and condition of the road, and submit estimates of future operations, as the business of the company and the progress of the work, may render proper and necessary.

Sec. 12. There may be appointed by the Board an Attorney for the Company, who shall be the legal adviser of the company and perform such professional duties as may be required by the Board.

Sec. 13. All subordinate officers and agents of the Company shall be appointed or employed by the Board of Directors, President or Chief Engineer in the several divisions of the service, as may be appointed by the resolutions of the Board from time to time, and the duties and compensations of all such officers and agents shall be regulated by the Board.

Sec. 14. The Board of Directors shall have power at any time by a vote of a majority of the active Board, to fill any vacancies that may occur in their body by death,

resignation or otherwise; also by a like vote to remove any officer of its own appointment or employed by an officer or the company, and the President or chief engineer (9) may remove at pleasure any subordinate officer or agent in their respective departments.

(9) Sec. 15. All elections shall be by ballot and all committees shall be appointed by the President unless otherwise ordered by the Board of Directors.

Sec. 16. The Stock of the Company shall be transferred on the Books of the Company upon proper assignment and delivery of the certificates of the stock. No transfer shall be valid unless made as in this section provided.

Sec. 17. Certificates of Stock shall be issued only for fully paid stock. In case of the alleged loss or the destruction of the certificates of stock due proof of such loss or destruction shall be made and a sufficient bond of indemnity given against any loss or damage the company may sustain, when a duplicate thereof may be issued.

Sec. 18. All disbursements shall be made by warrants drawn on the Treasury by the President or Secretary but no such warrant shall be drawn without an order of the Board.

Sec. 19. No contract shall be binding on the company unless previously sanctioned and ordered by the Board of Directors, and all contracts made by the Board of Directors, and all contracts made by the Board of Directors, or any officer, agent or employe of the company, shall be subject to and shall contain express stipulations

that no stockholder of the company shall be individually or personally liable or bound for the (10) debts of the Company beyond or exceeding the actual amount of stock by him subscribed or held, and all contracts not containing and subject to such stipulations shall be void and neither the Board of Directors or any officer, agent or employe of the company, nor any other person shall have any power or authority to bind the company or the stockholders by any contract or agreement unless the same shall contain such stipulations.

Sec. 20. The order of business before the Board shall be as follows: When Quorum Appears the President shall call the Board to order

- 1st Reading of minutes
- 2nd Report of Committees
- 3rd Secretary's report
- 4th Treasurer's Report
- 5 Engineers report
- 6 Written communications
- 7 Unfinished business
- 8 New business

Prior to adjournment the minutes of the meeting shall be read amended if necessary, and approved by the Board.

Sec. 21. No alteration or amendment shall be made in these bylaws, unless presented at a regular meeting of the Board and Considered at a meeting subsequent thereto, provided any By-Laws—except Section 21—may be suspended by a vote of not less than two thirds of the Directors.

End of By Laws

(11) On motion it was

RESOLVED

That the President and Secretary are instructed on the part of the Oregon Central Railroad Company, to execute a contract with Albert J. Cooke, of the State of Massachusetts, for the building, completing and equipping of a railroad, according to propositions now submitted, and before the Board, from Portland, Oregon, Southeasterly, through the Willamette Valley, one hundred and fifty miles in divisions as specified, and report the same back for approval when duly executed.

On motion it was further

RESOLVED

That the President and Secretary are hereby instructed to execute two millions of non-assessable, preferred stock of The Oregon Central Railroad Company, in favor of Albert J. Cook, the said proposed contractor, to be delivered to him on the final execution and acceptance of the contract authorized to be made, as part payment for the construction of the road, and as collateral security for monies to be advanced by said contractors as a working capital. Said stock to bear interest at the rate of 7 per cent per annum, payable in gold, and there is hereby set apart a sufficient amount out of the first net earnings of the road to pay the same.

And it was further

RESOLVED

That the following form of stock be approved by the Board

(12)

(13) on motion it was

RESOLVED

That we adopt the annexed impression as the official seal of this company to be used until a permanent seal is procured.

The contract authorized to be made for the company, by the President and Secretary, with Albert J. Cook was now presented, as duly executed, according to the order of the Board and in Duplicate, and the same having been compared and found correct and the substance thereof approved. On motion it was:

RESOLVED

That the said contract be entered in full upon the minutes of this meeting of this Board, that the same be fully confirmed and said two millions of preferred stock be executed and delivered in accordance with the terms thereof, as heretofore ordered.

The terms and propositions of said contract are in words and figures as follows:

Contract.

Memorandum of an agreement made this 23rd day of April in the year of our Lord One Thousand eight hundred and sixty seven (1867) by and between the Oregon Central Railroad Company organized under and in conformity with the general laws of the State of Oregon of the first part and Albert J. Cook of the Second Part,—witnesseth—

That whereas the party of the first part own the right, privilege, and franchise for constructing, equipping and

running a railroad from Portland in the state of Oregon, South, to the California line and whereas the party of the second doth agree (14) and does hereby agree with the party of the first part to build and equip one hundred and fifty miles of said railroad with all the necessary rolling stock from Portland, South through the Willamette Valley, for the sum of Five Millions two hundred and fifty thousand dollars (5,250,000) reckoned at gold and specie value, that is to say if payment from time to time be made in national currency, now so called, it shall be made in payment for so much only as the same is worth in gold at the time of such payment, and so it shall be reckoned with anything else that may be received in payment at the time of such payment.

And the party of the second part does farther agree with the party of the first part to build and equip with the rolling stock complete for the working of the same that is to say the road shall be built upon a uniform gauge of four (4) feet and eight and a half ($8\frac{1}{2}$) inches, the maximum grade not to exceed eighty (80) feet per mile and a minimum curvature of ten degrees (10) the width of the road bed to be eleven feet on the surface, the iron used shall be the best quality known as "T" rail weighing at least 45 lbs. per linear yard, the ties shall be the best wood to be obtained for strength and durability, not less than six by eight inches and eight feet in length, to be laid at the rate of two thousand six hundred and forty per mile, the amount of rolling stock shall consist, for the first division, of twenty five miles extending from Portland to French Prairie, of two first class locomotives,

weighing not less than sixteen tons each, two first class passenger cars, two baggage or express cars.

The same division of about twenty-five miles reaching to Salem, one first class locomotive of not less than sixteen tons weight, two first class passenger cars, one baggage car, twelve box cars and two platform cars.

For the next division of about twenty-five miles reaching to Albany, one first class locomotive, weighing not less than twenty six tons, two first class passenger cars.

For the next division of about ten miles reaching to near Corvallis, one first class locomotive, weighing not less than twenty-six tons, two first class passenger cars and six box cars.

For the next division of about thirty miles, to Eugene City, one first class locomotive weighing not less than thirty tons, three first class passenger cars, one baggage and two each, box and platform cars.

For the last division of about thirty miles, two first class locomotives weighing not less than thirty-six tons, four passenger cars, twenty box cars, and six platform cars.

The contractor shall provide suitable stations and turn outs at various points to be designated by the company, at the rate of one for every ten miles: for water tanks as often as once in twenty miles, where water can conveniently be had such locations to designated by the company. At the large towns designated as the termini of the different divisions, suitable buildings shall be erected for the accommodation (16) of passenger and freight, depots of ample size to accommodate the business of the

road, shall be constructed in a substantial and durable manner, also engine houses of a sufficient capacity for the safe housing of all the engines. The contractors shall erect and furnish suitable machinery for a repair shop at a point designated by the company.

The President of the Company and the Engineer of Construction shall compose a commission, whose approval shall be necessary to the acceptance of the work.

And the party of the second part doth agree to receive payment for the building and equipping said one hundred and fifty miles of railroad in the company's first mortgage railroad bonds, payable in twenty years from the date of the same, with interest semi-annually, provided that in case the company while the road is being constructed is unable from its resources to pay the interest on its bonds issued to the said party of the second part, the same shall be payable in the first mortgage bonds of the company, or regular series and character at their par value.

All said bonds to be secured by a first or bottom mortgage on said one hundred and fifty miles of railroad, and all the rolling stock thereof and such amounts in specie as the company may provide, and the party of the first part hereby promises, covenant, and agrees with the party of the second part to pay the sum of five millions, two hundred and fifty thousand dollars, received at gold or specie value, as aforesaid (17) to the party of the second part, or its (17) assigns, for constructing and equipping, with rolling stock said railroad, from Portland in the State of Oregon to the head of the Willamette

Valley, or a distance of one hundred and fifty miles: and the party of the first part promises, covenants, and agrees with the party of the second part, to issue or cause to be issued, the first mortgage, gold bearing, railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage on said one hundred and fifty miles thereof, and all the rolling stock of the same. Interest on said bonds to be made payable at the rate of seven per cent per annum as aforesaid, and the said party of the first part agrees that the said bonds shall be issued in such forms and sums, and to be endorsed, if need be, to make the same negotiable and satisfactory. And the engineers employed are to be paid by the party of the second part and shall, or may be, nominated by the party of the second part, if it see fit so to nominate the same and that the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company.

And the party of the first part further agrees, to deposit in some safe bank in the State of New York, designated by the party of the second part, fifteen thousand dollars, per mile of the amount of said railroad bonds, to be delivered to the party of the second part in payment as aforesaid as the bills of Lading for iron and rolling stock, and other materials, shall, from (18) time to time be accepted by such (18) Engineers, provided that the company shall not sell or dispose of their regular first mortgage bonds at less than their par value, and the party of the first part further agrees to make monthly payments upon the work as approved by the Engineer,

reserving twenty per cent of the amount of work done each month, until the division is accepted by the commissioners.

And the party of the first part further agrees to use every measure in their power to obtain as much case and money aid from the People of Oregon, as is possible for the furtherance of the enterprise.

And the party of the first part further agrees to issue two millions of preferred stock of the Oregon Central Railroad Company, bearing interest at seven per cent per annum and deliver the same to the party of the second part immediately after the signing of this contract.

And it is further understood and agreed between the parties hereto, that the work shall be commenced within one year after the signing of this contract, and the whole one hundred and fifty miles be completed within five years thereafter.

And it is also understood that the common stock of the O. C. R. R. Co. shall be offered for sale to the people of Oregon at ten cents on the dollar, and at the expiration of six months from the commencement of work on the road, subscriptions at the same rate shall be received from any persons whomsoever, for the amounts then remaining unsold. (19) In witness whereof, we, Geo. L. Woods, President, and Saml A. Clarke, Secretary on behalf of the Oregon Central Railroad Company, as authorized by the Board of Directors, have hereunto affixed our hands and the seal of said company, on the part of said company, party of the first part, to the foregoing

contract, this the twenty-third day of April, A. D. 1867,
at the office of said company in the City of Salem, Marion
Co., Oregon.

CORPORATE
SEAL.

Geo. L. Woods,
Prest O C R R Company
S. A. Clark
Secy O C R R Company

And for the party of the second part

Witness	Albert J. Cook
F. R. Brooks	by his attorney in fact
J. H. Parker	S. G. Elliott

On motion it was resolved

That the Oregon Central Railroad Company borrow
the sum of Five Millions Two Hundred and Fifty Thous-
and (\$5,250,000) Dollars on the credit of the corporation,
that sum being deemed necessary for constructing and
completing this railroad, and for the purpose aforesaid
there shall be issued Five thousand two hundred and
fifty of the bonds of the said company of the denomina-
tion and in sums of one thousand dollars each, to be
numbered from one to five thousand two hundred fifty
inclusive each payable to.....or the
holder thereof all of said bonds, to be of the same tenor
date and amount and payable in gold coin of the United
States of America, dollars for dollar, in the city of New
York, and twenty years after the date thereof, on a day
certain, to be therein named, and to bear interest at the
rate of seven per cent per annum, payable semi-annually
at the city of New York, and in the gold coin of the

United States for which interest, then shall be attached to said bonds, interest coupons payable to bearer in said, City of New York in United States gold coin, dollar for dollar, on the days and times expressed as aforesaid, and the coupons so attached to each of said bonds shall be numbered from one to forty inclusive, which bonds shall be in the following form to-wit:

(See printed blank pasted in).

A

No.

THE OREGON CENTRAL RAILROAD COMPANY.

1000

1000

THE OREGON CENTRAL RAILROAD COMPANY,
(a corporation duly authorized under the laws of Oregon,
and having its principle place of business in the city of
Salem, in the county of Marion, in said State,) hereby
acknowledge themselves indebted to Pitt Cooke, esq.,
or to the holder hereof, in the sum of One Thousand Dol-
lars, payable in gold coin on the United States, at the
City of New York, twenty years from the date hereon,
with interest thereon at the rate of seven per cent per
annum, payable semi-annually, in like coin, at the City
of New York, on the first day of January and July of
each year, upon the surrender of the appropriate coupon
bond hereto annexed. This bond is one of the Series
“A” of FIRST MORTGAGE BONDS, issued to a un-
animous resolution of the Board of Directors, adopted
April 23, 1867, authorizing the issue and negotiation of
the Bonds of the said Company to the extent of Five
Millions Two Hundred and Fifty Thousand Dollars, in

-

six grand series designed respectively A, B, C, D, E, AND F for the purpose of constructing, completing and equipping the Railroad belonging to the said Company.

The payment of the principal and interest of this and the other "FIRST MORTGAGE BONDS" above mentioned, is secured by a first mortgage executed by the said company on the first One Hundred Fifty Miles of their Railroad, from the City of Portland, in the State of Oregon, to the head of the Willamette Valley, in said State, and on all the rolling stock, fixtures and franchises thereof to A. C. Gibbs and W. S. Ladd, of the said City of Portland, said State, as Trustees for the holders of such "FIRST MORTGAGE BONDS," and coupons, and is further secured by the creation of a sinking fund for the purpose of such payment.

IN TESTIMONY WHEREOF, The said company have caused their Corporate Seal to be hereunto affixed, and these presents to be signed by their President and Secretary, this twenty-third day of April A. D. one thousand eight hundred and sixty seven.

STAMP.

Series A.

No.

The

OREGON CENTRAL RAILROAD COMPANY
SEVEN PER CENT. "FIRST MORTGAGE BOND."

Payable in Gold Coin, April 23, 1887.

\$1,000.00

We hereby certify that this Bond is one of the within described series A, (said series being composed of eight

hundred and seventy five Bonds of like tenor and date), secured by a mortgage executed and delivered to us as within described.

Trustees.

Said bonds shall be signed by the President and Secretary of the Company and the corporate seal of said company affixed thereto and the coupons shall be signed by the secretary, the President and Secretary being hereby fully authorized and empowered in the premises, so to do.

A

Bond No.

The Oregon Central Railroad Co.

Will pay to the bearer Thirty-five Dollars, in gold coin, at the City of New York, on the 1st day of January, 1868.

Sec'y.

(21) And it is further ordered and resolved that there shall be and is hereby created, a sinking fund of a sufficient amount to pay from time to time, as the same becomes due, the interest and also the principal of said bonds. That the Treasurer of said O. C. R. R. Co. shall on or before the first of June and December in each year, set apart out of any money in his hands, belonging to said company, a sufficient amount to pay the coupons for the interest on all such outstanding bonds, then next coming due, which shall be appropriated solely for that purpose under the order of the Board.

That unless such bonds are otherwise sooner paid or redeemed, there shall be set apart as and for a fund to redeem the same, on the first day of September, of each of the following years, 1883, 1884, 1885, 1886 and 1887,

the sum and amount of one millions and fifty thousand dollars (\$1,050,000) in gold coin, which said sum of money shall be kept and used, or property received for that purpose and no other, under the order and direction of the Board of Directors, and it is further ordered and Resolved

That to further receive the payment of said bonds and the interest thereon as stipulated and provided as aforesaid, a mortgage be executed by the President and Secretary with the Corporate Seal of the Corporation affixd thereto, and to be a first lien, upon the first one hundred and fifty miles of the Company's railroad, commencing at the City of Portland and running southerly one hundred fifty miles, together with all the depots, warehouses, and superstructures upon and belonging to said one hundred and fifty miles of railroad and upon the (22) rolling stock, personal property and franchises pertaining thereto, as provided and permitted by the laws of this State. On motion it was further

Resolved, That the orders and resolutions, so passed as aforesaid, and the bonds therein ordered to be executed and issued, and the mortgage to be made as security for the same, are so made, done, performed and executed upon the express condition that the stockholders of said company, and the individuals who may thereafter hold stock in said Company, shall not, in name or form either directly or indirectly be liable for any of the debts or liabilities of said company beyond the amount respectively and individually subscribed by them

to the Capital Stock of the Company.

On motion it was

Resolved that the Secretary be authorized to procure the necessary stock certificates for the use of the company.

Albert J. Cook, the contractor aforesaid having by his attorney in fact, S. G. Elliott in a written communication, designated Jay Cooke & Co. of New York as his bankers to receive the bonds to be deposited according to contract, it was

Resolved, That the President and Secretary are authorized and instructed to execute three hundred and seventy five bonds from 1 to 375 inclusive, Series "A" of the form heretofore provided and forward the same to said Jay Cooke & Co., Bankers, corner of Nassau & Wall Sts., New York City, with a letter of instructions, directing them to deliver the same, from time to time, in amounts corresponding to the value of iron and material shipped by said contractor for the use of the Oregon Central Railroad Company. Whereupon the meeting adjourned.

S. A. Clarke,

Secretary.

At a called meeting of the stockholders held April 26th, 1867, at the Company's office in Salem, there were present G. S. Woods, President, J. A. Morris, I. R. Moores and S. A. Clarke.

This meeting being called to order it was moved by I. R. Moores that F. A. Chenoweth, a stockholder of the company be nominated for a Director of the Company to fill the existing vacancy. A ballot being taken, F. A.

Chenoweth received all the votes cast, representing a majority of the stock, and he was declared duly elected a Director of the Company.

It appearing that E. N. Cooke, elected a Director of this Company, is now absent from the State and cannot qualify or perform the duties of the office, it was, on motion of I. R. Moores,

Resolved, That the position of Director for which E. N. Cooke was elected be declared vacant on account of his absence from the state, which motion passed, and the election of a Director to fill the vacancy being in order, T. Mc F. Patton was nominated by I. R. Moores and a ballot being taken he received a vote of (24) a majority of the Stock (24) of the company, he was declared to be unanimously elected such Director.

The official oath was administered as follows.
State of Oregon,

Marion Co.—ss.

I hereby solemnly swear that I will faithfully discharge the duties of Director of the Oregon Central Railroad Company to the best of my ability. So help me God.

Signed F. A. CHENOWETH

T. F. Mc PATTON

(Notarial Seal)

R. S. 5c

Subscribed and sworn to before me this the 26th day of April A. D. 1867.

Witness my hand and Notarial Seal hereunto affixed.

I. R. Moores, Notary Public.

Whereupon the meeting adjourned.

S. A. Clarke,
Secretary.

(25) At a meeting of the Board of Directors of the Oregon Central Railroad Company, held at the office of the Company at Salem, November 27th, A. D. 1867, there were present, Geo. L. Woods, J. H. Moores, I. R. Moores, T. Mc F. Patton and S. A. Clarke, On the part of the contractors, A. J. Cook and Co. successors in interest to A. J. Cook who contracted on the 23rd of April last, to build and equip one hundred and fifty miles of the company's road from the city of Portland South, there appeared before the Board, N. P. Perine of San Francisco, one of the said firm of A. J. Cook and Co., who on the part of said contractors, proposed that a supplemental contract should be entered into to define and in some respects modify the terms of the said contract of April 23, 1867. After due considerations with J. H. Mitchell and S. Ellsworth attorneys for the corporation, it was ordered by a unanimous vote of the members of the Board present, that the Oregon Central Railroad Company will this day enter into a supplemental contract with A. J. Cook and Co., which shall inform and matter be as follows:

This supplemental agreement, hereunto attached, is made to the following described contract, a copy of which, paged and lined, is hereunto annexed.

“Memorandum of an agreement made this 23rd day of April in the year of our Lord One Thousand Eight Hundred and Sixty Seven (1867) by and between the Oregon Central Railroad Company, organized under and in accordance with the General Laws of the State of Oregon of the first part and Albert J. Cook of the (26) Second

Part, and is made as an amendment to certain provisions of the said above described agreement and supplementary thereto.

The above described contract is described as follows:

Strike out line 5 page 4 and lieu thereof insert— In the Company's First and second mortgage railroad bonds, also in line 14, same page, after the words "a first" add the words and second; also amend line 1 page 5 thus: after the word "first" insert and second.

Also amend said contract by striking out lines 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, all on page 5 of said contract; also strike out lines 21, 22, 23, 24, 25, 26 and 27 down to the word "unsold" on page 6 and in whatever lines and places in all said contract, the word "First Mortgage" occur, the same shall be amended to read First & Second Mortgage.

This supplemental agreement further witnesseth:

That whereas the party of the second part to the above described agreement, have expended large sums of money for materials for said road, which is now on the way by vessels to the port of San Francisco, California, and whereas the party of the first part failed to present the bonds provided for in the above described contract, before amended in a satisfactory form and manner, and whereas the said amount of material already purchased is equal to three fourths of the amount required for the first division as near as the same can be estimated, and whereas the party of the second part have arranged to use a fifty pound rail in place of the 45 lb. rail provided for in the above described contract, and to which the

party of the second (27) part agree: therefore the party of the first part agrees that in addition to the covenants and agreements set forth in the above described contract, that the party of the second part shall have the free use of the said railroad for the transportation of all the material required in the said work, also as well, all men, horses, mules, cattle, sheep, hogs and provisions of any and every kind required by said party, while constructing said road. Also all iron, iron rails, bars, castings, spikes, chairs, switches, machinery, frogs, car-wheels, and all timber for bridges, trestle work, cattle-guards and cross ties and timber for all depots, stations, and all other materials required or used, with everything else required by said contract in the construction of said road, until said one hundred and fifty miles of said road has been completed.

And the party of the first part further agrees to execute a new mortgage of sixteen thousand dollars per mile in place of the first one for thirty-five thousand dollars per mile and deliver to the said party of the second part three hundred thousand dollars of amount, also to execute four hundred thousand dollars of Series "B" for the second division and deliver one hundred thousand dollars of the said Series "B" at the same time that the said three hundred thousand dollars of series "A" which shall be delivered immediately after the signing of this contract, to the party of the second part.

And the party of the first part further agrees to deliver the remaining one hundred thousand dollars, for the first division as soon as the engineer shall (28) cer-

tify that (28) all the materials are bought for the said first division; and also shall deliver the remaining three hundred thousand of the series "B" as soon as the said engineer shall certify that all the materials have been bought for the second division; and so it shall be with all the remaining divisions.

Said first mortgage bonds, to the amount of sixteen thousand dollars per mile shall be delivered as soon as the Engineer of the said company shall certify that the materials are purchased for such divisions until all the amounts of such first mortgage bonds are delivered to said party of the second part.

And the party of the first part agrees to execute a second mortgage on their road after same form and style and for a like amount of the first mortgage and execute the second mortgage bonds and deliver the same as payment for work done by said contractors after all other means of said Company shall be exhausted, in all other respects bearing the same rate of interest payable at the same time and in the same kind of money as provided for in the mortgage for thirty five thousand dollars, in the attached former contract, only differing in being a first and second mortgage and in amounts of sixteen thousand dollars each in place of the one for thirty five thousand dollars.

And the party of the second part agrees to receive the said second mortgage bonds upon the terms set forth in the former contract for amounts due after the company shall have exhausted all their other means, and said

bonds (29) shall be (29) taken upon the same terms as the first mortgage bonds.

And the party of the first part agrees they will enter upon the canvassing of the State for the purpose of having the common stock disposed of, upon the terms set forth in the preceding contract. That is to say, the stock shall be issued as full paid stock when ten per cent has been paid on the same, and all monies received for said stock shall be paid to the contractors for work done so far as the same will go, reserving only ten per cent of the amount to meet the expenses of said Company.

And the party of the first part further agrees to advance to the party of the second part when the first section or division of road is completed according to said contract, common stock of said company to the amount of thirty thousand dollars per mile for each mile of the two first sections of said railroad, less the amount that may at that time have been sold as hereinbefore provided, and as each remaining section or division of said railroad is completed, the said party of the first part shall transfer to the said party of the second part, common stock of the company, to the amount of thirty thousand dollars per mile, for each mile of the next succeeding division of said road, to be constructed, less such amounts that may at that time have been sold as aforesaid, and the stock so transferred shall be charged to the said party of the second part at the rate of ten cents on the dollar, and the amounts so charged to the said party of the second part, shall be considered as a coin payment, made to them for the construction of said road.

(30) And the party of the first further agrees to select a suitable location for the Company's shops and secure a title to the land for the same purpose as soon as possible after the signing of this Supplementary contract. Also they agree to assist in securing the right of way for the road as fast as possible after the engineer shall locate the line of said road; also that the party of the first part will enter upon said canvassing for the taking of said stock as soon as this supplementary contract is signed, and extend the same throughout the State of Oregon in a thorough manner.

And the party of the second part agrees to accept the above conditions in lieu of the former contract as an amendment to the same, reserving all the rights and covenants of the above described contract not changed or affected by this supplementary contract. And the said first contract is to remain in force in all respects wherein the same is not changed by the present supplementary contract made in pursuance and to the mutual benefit of both parties hereto, and for the consideration above named.

In witness whereof the parties hereto have caused the same to be signed by the President and Secretary of the party of the first part and by the party of the second part on this the 27th day of November A. D. 1867.

(31) And on motion the Secretary was instructed to prepare such contract in duplicate and the President and Secretary were instructed and authorized to sign and execute the same on behalf of the company, and to deliver a copy of said contract, so duly signed and exe-

cuted to N. P. Perine when he should have signed and executed the said duplicate copies for and as one of the firm of A. J. Cook & Co., successors in interest to A. J. Clarke, with whom the original contract was made on the 23rd day of April, 1867.

And on motion the Secretary was instructed to prepare for delivery to said N. P. Perine the bonds of the Company to be delivered to said contractors, according to the terms of said contract, that the same may be ready for delivery when the terms thereof are complied with. On motion C. N. Ferry and I. L. Parrish of Salem were duly elected Trustees for the bondholders, as required in issuing bonds under term of the Mortgage required to be made. And the Secretary was instructed to notify them of their election as such trustees and ascertain if they accept the said trust.

On motion the Board adjourned.

S. A. Clarke,
Secretary.

(32) Salem, Oregon, April 7th, 1868.

At the annual meeting of the stockholders of the Oregon Central Railroad Company held this day at the company's office at Salem there were present, representing the majority of the stock,

A. J. Cooke, by S. G. Elliott his attorney.

Geo. L. Woods by I. R. Morris his atty.

S. Ellsworth by I. R. Morris his attorney.

J. H. Moores.

T. McF. Patton.

S. A. Clarke.

E. N. Cooke.

S. B. Parrish.

In the absence of the President I. R. Moores the Vice President presided.

The minutes of a meeting of stockholders purporting to have been held on the 24th day of March, ultimo, were read and on motion of Mr. S. G. Elliott it was ordered, That all of said proceedings are hereby struck out and declared null and void, for the reason that a majority of the stock of the company was not represented.

On motion the meeting adjourned to meet at the office of the Chief Engineer at the City of Portland, on Wednesday, April 15th, 1868.

S. A. Clarke,
Secretary.

Office of Chief Engineer of E. C. R. R. Co.

Portland, Oregon, April 15, 1868.

At an adjourned meeting of the stockholders of the Oregon Central R. R. Company held this day there were present of the stockholders of the company, representing a majority,

A. J. Cooke by S. G. Elliott his atty. proxy.

G. L. Woods by I. R. Moores his attorney proxy.

S. Ellsworth.

J. H. Moores.

T. McF. Patton.

S. A. Clarke.

E. N. Cooke.

S. B. Parrish.

F. A. Chenoweth by I. R. Moores his proxy.

J. H. D. Henderson.

Phil Wasserman.

S. F. Chadwick by H. Boyd his proxy.

A. M. Sorgo.

A. L. Lovejoy.

J. Conser.

J. E. Ross by H. Boyd his proxy.

J. H. Douthit.

Hamilton Boyd.

A. F. Hedges.

J. H. Mitchell.

I. R. Moores, Vice President presiding, the minutes of the meeting held April 7th, were read and approved.

On motion Mitchell, Ellsworth & Clark were appointed a committee to report necessary amendments to the By Laws of the Company. After consultation the committee made the following report:

Report.

Your committee appointed to review the bylaws would make the following report.

We recommend that Sec. 2 be amended so as to read as follows: "Sec. 2, the annual meeting of stockholders of this Company shall be held on the first Tuesday of April of each year at such place as shall be appointed by resolution of the Board of Directors at which an election for twenty directors shall be held, to serve for the ensuing year and until their successors are elected and qualified.

In case the said annual meeting for any cause shall not be held on said day, or a majority in value of the

stockholders shall not be present, some other time will be appointed within 90 days thereafter."

And we further recommend that Sec. of said By Laws be so amended as to read:

"Sec. 6. Seven or more Directors shall constitute a quorum for the transaction of business, but no debt shall be contracted unless passed by at least 11 votes. Official meetings may at any time be called by the President or by five members of the Board.

Signed) J. H. Mitchell
 S. Ellsworth
 S. A. Clarke

On motion the report was received and the committee discharged. Mr. Mitchell moved that the report be adopted and the By Laws be amended as therein proposed, which motion passed by a unanimous vote.

(35) Mr. Loryea moved that the meeting proceed to the election of twenty directors to serve the ensuing year. Which motion passed. Mr. Ellsworth moved that the vote of the individuals present composing the meeting shall be taken, to designate such Board of Directors, and that the Secretary be instructed to then cast a vote for the amount of stock held by the Company, said vote to be given for the persons indicated by the vote previously taken.

Thereupon a ballot was taken according to law, and upon the vote being cast by the secretary in accordance with the foregoing instructions the following result was arrived at.

Geo L. Woods received 70,019 votes.

I. R. Moores received 70,019 votes.

S. A. Clarke received 70,019 votes.

E. N. Clarke received 70,019 votes.

F. A. Cheoweth received 70,019 votes.

F. McF. Patton received 70,019 votes.

J. H. D. Henderson received 70,019 votes.

S. Ellsworth received 70,019 votes.

Phillip Wasserman received 70,019 votes.

S. F. Chadwick received 70,019 votes.

A. M. Soryea received 70,019 votes.

A. L. Lovejoy received 70,019 votes.

Jacob Conser received 70,019 votes.

John F. Miller received 70,019 votes.

John E. Ross received 70,019 votes.

J. H. Douthit received 70,019 votes.

Hamilton Boyd received 70,019 votes.

S. B. Parrish received 70,019 votes.

A. F. Hedges received 70,019 votes.

and were declared elected such Board of Directors.

Oath of Directors.

The Directors elected who were present, as follows, appeared and qualified by taking this oath.

State of Oregon,

County of Multnomah,—ss.

We, I. R. Moores, J. H. Morris, S. A. Clarke, E. N. Cooke, F. Mc F. Patton, J. H. D. Henderson, S. Ellsworth, Phil Wasserman, A. M. Soryea, A. L. Lovejoy, J. Couser, J. H. Douthit, H. Boyd, S. B. Parrish and A. F. Hedges, Directors of the Oregon Central Railroad Com-

pany, being severally sworn do severally depose and say that we will faithfully, and honestly discharge our duties as such directors.

I. R. Moores
 J. H. Moores
 S. A. Clarke
 E. N. Cooke
 T. Mc F. Patton
 J. H. D. Henderson
 S. Ellsworth
 Phil Wasserman
 A. M. Loryea
 S. S. Lovejoy
 Jacob Conser
 H. Boyd
 J. H. Southit
 S. B. Parrish
 A. F. Hedges

Subscribed and sworn to before me this fifteenth day of April, A. D. 1868,

(Notary Seal) C. W. Parrish
 Notary Public for Oregon.
 Stamp.

(37) Certificate of President as to election of the Board of Directors.

Portland, Oregon, April 15th, 1868.

This is to certify that an election of Directors of the annual meeting of the stockholders of the Oregon Central Railroad Company this day held, the following named gentlemen were elected as the Board of Directors of said Company for the ensuing year, to-wit:—J. H.

Moores, S. A. Clarke, E. N. Cooke, T. Mc F. Patton, J. H. D. Henderson, S. Ellsworth, Phil Wasserman, A. M. Soryea, A. L. Lovejoy, Jacob Conser, H. Boyd, J. H. Douthil, S. B. Parrish, A. F. Hedges, I. R. Moores, I. E. Ross, Geo. L. Woods, S. F. Chenoweth, J. F. Miller.

I. R. Moores, Vice Pres.

Acting Pres. and ex-officio inspector of election.

It was moved and carried that a meeting of the Board of Directors shall be held this evening at this place.

On motion the meeting adjourned.

S. A. Clarke,
Secretary.

(38) Meeting of the Board of Directors.

Office of the Chief Engineer.

Portland, Oregon, April 15th, 1868.

At a called meeting of the Board of Directors authorized by the meeting of the stockholders this day held there were present Messrs. J. H. Moores, I. R. Moores, Cooke, Clarke, Patton, Henderson, Ellsworth, Hasserman, Sorgia, Lovejoy, Conser, Boyd, Douthil, Hedges, Parrish.

On motion Mr. I. R. Moores, presiding the Board, proceeded to the election of officers for the following year.

Mr. Wasserman nominated Mr. I. R. Moores for President and upon a ballot being taken according to law, Mr. Patton and Mr. Conser acting as tellers, Mr. I. R. Moores received 13 of the votes cast and was declared by the secretary to be duly elected President of the Board, Woods received one vote and there was one blank vote.

Mr. Douthitt and Mr. Soryea were nominated for Vice President and upon a ballot, Mr. Douthitt received six votes, Mr. Soryea received nine votes and the President announced that A. M. Soryea having received a majority of the votes cast was duly elected Vice President.

Mr. Cooke and Mr. J. H. Moores were nominated for treasurer and upon a ballot Mr. Cooke received eight votes, Mr. Moores four votes, Mr. Boyd one vote and the President announced that A. M. Sorgia having received a majority of the votes cast was duly elected Vice President.

Mr. Cooke and Mr. J. H. Moores were nominated for treasurer and upon a ballot Mr. Cooke received eight votes, Mr. Moores four votes, Mr. Boyd one vote and the President announced that Mr. E. N. Cooke having received a majority of the votes cast was duly elected Treasurer.

Mr. Clark and Mr. Patton were nominated for Secretary and upon a ballot Mr. (39) Patton received four votes, Mr. Clarke ten votes, Blank one vote, and the President announced that Mr. Clarke having received a majority of votes cast was duly elected Secretary.

Mr. Clarke announced that as his position as Secretary might be considered incompatible with a voice as Director, he offered his resignation of the position of Director, which resignation, on motion, was accepted.

On motion it was ordered that a committee of three be appointed to prepare an address to the people of Oregon, on the value of railroads.

Messrs. Sorgia, Wasserman and Boyd were appointed as such committee.

On motion it was ordered that an executive committee of five shall be appointed.

Messrs. Parrish, Sorgia, Patton, Ellsworth and Lovejoy were appointed as such committee and at suggestion of Mr. Wasserman the President was added thereto, by the general consent of the Board.

On motion it was ordered that the Finance Committee, consisting of three Directors, be appointed.

Messrs. Cooke, J. H. Moores and Henderson were appointed as such committee.

On motion it was ordered that a committee of Ways and Means, consisting of three members shall be appointed.

Messrs. Boyd, Douthitt, and Wasserman were appointed as such directors.

On motion Messrs. Sorgia, Ellsworth and Patton were appointed a committee to prepare instructions to the various committees and to (40) devise a uniform system to be pursued in securing aid for the road.

Mr. Boyd offered the following.

Resolved

That the Directors of this Road resident in the City of Portland be authorized and directed to communicate and confer with the common Council of the City of Portland and the County Commissioners, as soon as practicable, relative to a terminus and the securing of aid toward the enterprise, which was unanimously adopted.

Mr. President presented for the information of the Board a copy of the complaint made in a suit brought by State of Oregon *ex rel* against J. Gaston and others, which was read by the Secertary.

Mr. James P. Flint who was present by invitation addressed the Board at length on the prospects of the enterprise, with many valuable suggestions as to course to be pursued to forward it successful completion. Expressing great admiration for the ability displayed by Mr. Elliott in securing aid from capitalists at the East, as contrasted with the success secured for similar enterprises in California in the like time.

Mr. Elliott was then invited to address the Board, and detailed to them his proceedings at the East, and amt of material purchased and money aid secured, as well as the difficulties that had attended him. He also submitted proposition for the Construction of the road through Southern Oregon which was (41) referred on motion to a special committee of three consisting of Messrs. Hedges and Boyd.

On motion is was

Resolved, That the Company send an Agent and Representatives to the East.

Which motion passed.

Mr. Lovejoy nominated A. M. Sorgea as such agent and representative, and a vote being taken, he was unanimously elected to said position.

On motion, the following preamble and resolution were adopted.

Whereas, It is deemed expedient as a measure to promote the interests of the Oregon Central Railroad Company and facilitate the fulfillment of the Contract existing between the said Company and A. J. Cooke & Company for the construction of the road of said Company

for one hundred and fifty miles from Portland, South, that one of the Directors of this Company shall be sent to the Eastern States as its representatives and Agent, and Whereas:

At a meeting of the Board of Directors of the Company A. M. Lorgia has been unanimously elected as such agent and representative, therefore it is hereby

Resolved, That A. M. Lorgia as the agent and representative of the Oregon Central Railroad Co. is fully empowered to represent our interests and assist in all matters relating to negotiation of the Company's bonds or the exchange of securities, and he is expected to generally advocate and protect the interests of the Corporation in the Eastern States, and keep the Company advised from time to time of his (42) progress. (42) Upon motion the Board adjourned until tomorrow morning at ten o'clock.

S. A. Clarke,
Secretary.

Portland, Oregon, Thursday,
April 1th, 10 o'clock A. M.

The Board met pursuant to adjournment. All present as of yesterday. The President in the chair.

According to arrangements made for commencement of work upon the road at East Portland, and for an appropriate celebration of that important event, the details of which are fully given the daily papers of the City of Portland, extracts from which are given herewith that the full voice of the press conceiving the same may be preserved in the minutes of the Company for convenient

reference, and as a permanent record thereof.

From the Daily Evening Bulletin.

RAILROAD COMMENCEMENT.

At the appointed hour this morning the various military and civic societies of our city, assembled on First street, where the procession formed in the following order:

Grand Marshal and Aids.

Fourteenth Infantry Brass Band.

FIRST DIVISION.

Capt. C. S. Mills—Marshal.

Washington Guard.

Fenian Guard.

Mayor and Common Council of the City of Portland.

Chaplain of the Day.

Orator of the Day.

President and Directors of the O. C. R. R. Co.

Chief Engineer and Corps O. C. R. R. Co.

SECOND DIVISION.

Chief Engineer Portland Fire Department—

Marshall.

Assistant Engineers Portland Fire Department.

Aurora Brass Band.

Willamette Engine Co. No. 1.

Multnomah Engine Co., No. 2.

Columbian Engine Co. No. 3.

Protection Engine Co. No. 4.

Vigilance Hook and Ladder Co. No. 1.

THIRD DIVISION.

Marshal.

Citizens in Carriages.

Citizens on Horesback.

Citizens on Foot.

After marching and countermarching through the city, the procession crossed the river, forming on the east bank and marching to the spot selected for the commencement of exercises. The officer of the company, the members of the Common Council, the orator of the day, and others, were called to the stand amid the plaudits of the multitude.

Rev. Mr. Waller advanced to the front of the Speaker's stand, and commenced the exercises by offering up a fervent prayer.

Hon. J. H. Mitchell then advanced, and on behalf of Samuel M. Smith, Esq., presented the President of the road with a shovel made from Oregon material by Oregon workmen. His speech was eloquent in the extreme, and will be found in another column. President Moore responded in a neat speech, and taking the shovel he broke the fire ground on the O. C. R. R. Co.'s road, (east side).

The vast number of people who left their business to attend these exercises attests the deep interest felt in the railroad enterprises now inaugurated in this State, and we sincerely hope that nothing will transpire to shake the people's confidence in either.

(42)

THE DAILY HERALD

OFFICIAL PAPER OF THE CITY.

Money Market.

San Francisco Legal Tender rates. . . . 72@72½

New York Gold Quotations.....138

CITY AND STATE NEWS.

Another Great Day.—We have to chronicle another great event in the history of our young state. As announced, the formal commencement of the construction of the Oregon Central Railroad (east side) was inaugurated yesterday at East Portland, near the South line of what is known as Stephens' Land Claim. The exact locality in which transpired the interesting proceedings was decked with nature's green and presented as lovely a scene as one could wish to behold. Scarcely a stick or stone could be found to mar the beautiful surface, and near by stood the proud and towering forest trees which grow so luxuriously in Oregon, and seemed to look down with satisfaction upon the surroundings which rendered famous the day of which we write. Our object is but to give a general idea of what transpired for the information of those who were not present. We would gladly publish the speeches of the different orators but our space actually forbids such an undertaking. Early in the day our people (and the strangers who were in the city) began to stir and gave indications that something important was looked for. The Portland and Frush ferry boats were both engaged for the auspicious occasion, and everything that could be done by man was accomplished to consummate the celebration with a crowning success. At an early hour the Fannie Troup arrived at her wharf, bearing a large number of visitors from Vancouver, including the fire department of that town and the Cavalry band from the garrison. At the

wharf the firemen of our own city met and received their brother firemen in a flattering manner, and escorted them through our streets. The Washington and the Fenian guards were out in gay uniforms, and lent enthusiasm to the occasion by their military bearing and presence. The Aurora Brass Band had arrived the day before and gave us some of their sweetest strains. The programme, as advertised, was carried out to the letter. The Marshal (Zieber) and his Assistants (Messrs. Starr and Whiting), succeeded admirably in the parts allotted to them. When the great concourse of citizens and visitors reached the locality where the ground was to be broken, they found great preparations had been made by the erection of stands, shades, and seats for the ladies, and in fact all that could be had been done, except to provide seats for the most of the thousands who were present, which of itself was ordinarily impossible. The stream of visitors was actually to the close of the proceedings, hence, to estimate the number there were out, is, to say the least, impracticable.

Everybody busied themselves talking, looking, and surmising, and canvassing the great work to be commenced—the railroad stakes then stuck in Oregon soil was a wonder almost of itself, and they were gazed at with interest by all. After the crowd had become somewhat calm, Mr. Loryea called the multitude to order and stated that the first in the order of the ceremonies was the presentation of the shovel mentioned by us a day or two since as having been manufactured by the Willamette Iron Works in this city expressly for the occasion. The

presentation speech was made by J. H. Mitchell, Esq., for and in behalf of Sam. M. Smith, who procured made this implement of industry. Mr. M. indulged in a few happy thoughts upon the resources of Oregon, prompted by the fact that the shovel held in his hand was manufactured entirely of Oregon material, even to the oil upon the handle; the silver upon which the inscriptions were made was taken from the mountains of Santiam. President Moore, of the Company, received the shovel and made a neat response, after which he descended and with his own hands formally commenced the stupendous work of constructing a railroad. Music and deafening cheers filled the air and all present seemed to be relieved, now that work had commenced. Immediately after Mr. Moore completed breaking ground, about fifty Chinese workmen began in dead earnest the grading of the road. The orator of the day, Mr. Upton, was then introduced, and for a short time indulged in the consoling thoughts suggested by the commencement of a great work, which in time would make us a great and important state. The next speaker called to the stand was J. N. Dolph, Esq., who also indulged in happy remarks suggested by the importance of the occasion. J. H. Reed, Esq., was then loudly called for; he made his appearance and excused himself with the fallacy that he had nothing to say. But the audience knew better, and repeated their demands for his reappearance. He couldn't dodge it, and forth he came and made one of those happy little speeches for which Reed is proverbial. After the conclusion of the speeches, and the sights had

been seen, i. e., laborers actually at work on the railroad, the entire assemblage reformed in a column, the military and firemen in the lead, and marched to the ferry landing, when they crossed as fast as two boats could carry them. Arrived upon this side of the river the different associations were escorted with music to their various quarters, and the Common Council, the Mayor and city officers to the Council Room. The Vancouver firemen and military returned apparently happy over the day's doings. The steamer Senator was hauled up below the ferry landing, in East Portland, to accommodate those who desired to ascend the river. Our citizens seemed determined to put in a full day, and many if "not more" gave themselves up to jollity and good feeling for the fraction of the day which remained. Not a disturbance of a serious nor a semi-serious nature occurred during the whole day, and that we consider a compliment to our people at large which cannot be granted to communities outside of Oregon. It is determined, we understand, to increase the force of laborers to continue the work commenced—which certainly is the hope of every man who has the interest of our State at heart.

(44) THE DAILY OREGONIAN.

FRIDAY MORNING, APRIL 17, 1868.

CITY.

Money Market.

San Francisco Legal Tender Rates.....71½@72

New York Gold Quotations.....138⅝

BREAKING GROUND—EAST SIDE.—The 16th day of April, 1868, was a gala day in this city—a day to be

long remembered by, at least, all who participated in, or witnessed, the ceremonies of "breaking ground" for the Oregon Central Railroad Company, East Side. At an early hour, large crowds of people belonging to this city, Vancouver, Oregon City, the towns above, and the surrounding country, gathered upon the principal streets to await the forming of the procession, announced to take place at 10 A. M. Flags were flying from the several engine houses and most of the principal buildings of the city. The piazzas of the hotels and many of the residences, supported crowds of spectators of the animated scenes in the streets below. Everywhere were people on foot, on horseback and in carriages, hurrying hither and thither, in active preparation for the coming celebration. Never, except, perhaps, on our great National anniversaries, has Portland witnessed a more general turnout of people, or more animated spectacles than were to be seen all along First and Front streets yesterday morning.

THE PROCESSION.

At about 11 o'clock, the elements of the procession having been assembled, the Marshals began to form the column, on First street, the right resting on Stark. At a few minutes past eleven, the procession moved up First street, led by the Aurora band, followed by the Washington guard, the Mayor and members of the council of the City of Portland, the Chaplain, Orator of the Day, the President and Directors of the Oregon Central Railroad Company, the Chief Engineer and corps of employees, constituting the first division. In this division was borne

the shovel to be presented by Samuel M. Smith to the President of the Railroad Co., and to be used in breaking ground. The second division consisted of the First U. S. Cavalry Band, the delegations of firemen from the Vancouver Fire Department, and the Portland Fire Department. The third division consisted of citizens on foot, on horseback and carriages. The procession, after marching through the principal streets, proceeded to the ferry, and crossing as rapidly as the two commodious boats could carry the people, reformed on the east side of the river and marched to the place selected for breaking ground. Long before the procession moved, vast crowds of people flocked to the boats and crossed over in advance to make sure of being present when the ceremonies should begin.

THE GROUNDS.

The place selected for breaking ground was in an open field about three-fourths of a mile from the ferry landing at East Portland, and, perhaps, five hundred yards from the east bank of the river. Just on the right of the surveyed line of the railroad a stand had been erected for the speakers, Directors and others who were to participate in the ceremonies. Opposite this was a shed containing tiers of seats for ladies. On the west and directly across the line of the road, were several tiers of seats for spectators—the three forming a sort of court or square opening to the eastward and looking directly out upon that part of the road where the workmen were to begin the grading as soon as the signal should be given that ground was broken. Just on the right of the speak-

er's stand in the center of the road, stood a flagstaff whose top floated the National banner. The preparations for seating the audience proved far too limited, not more than one fourth of those present being able to get seats. A little way to the eastward were piles of wheelbarrow material, ready to be put together, shovels, picks and various other implements to be used in the work of construction, and farther along on either side of the market lines of grade, stood long rows of Chinamen with shovels in hand.

THE CEREMONIES.

The assemblage, numbering not less than five thousand people, of whom a very large number were ladies, having gathered about the stand, Dr. Loryea came forward and announced that the ceremonies would be opened with prayer by the chaplain of the day, Rev. A. F. Waller. The chaplain arose and addressed the throne of grace, with an impressive petition for the favor of God upon the enterprise now about to be undertaken.

PRESENTATION OF THE SHOVEL.

After music by one of the bands, the presentation to the President of the Oregon Central Railroad company of an Oregon-made shovel, was announced. This shovel bears on it a beautiful silver plate attached to the handle with the following inscription:

“Presented by Sam'l M. Smith to the Oregon Central Railroad: Portland, April 16th, 1868. Ground broken with this shovel for the first railroad in the State.”

PRESENTATION SPEECH BY HON. J. H. MITCHELL

Mr. President of the Oregon Central Railroad Com-

pany, ladies and gentlemen: I have been selected upon this occasion to present, in the name and on behalf of Sam'l M. Smith, Esq., one of the worthy pioneers in trade of the city of Portland, to the Oregon Central Railroad Company, this substantial and magnificent piece of workmanship which I now hold in my hand, and which is truly and emphatically in the various materials from which it is constructed, a most fitting emblem of the invaluable and unfailing resources of the State of Oregon. The blade of this essentially home production, this substantial shovel, beaten out as it is from the virgin ore taken from the prolific mines of Oswego—the Pittsburgh of Oregon—where lies imbedded this valuable metal in inexhaustible quantities and of most fabulous richness, is a true representative of this important class of our mineral wealth. The handle, made from an Oregon maple, represents that material interest which includes all the vast resources of trade and commerce that can and must eventually spring from the most magnificent forests with which our State abounds. The beautiful silver plate that adorns the handle, and which bears upon its face the inscription of the donor, was carved out of the precious metal taken from the mountains of Santiam within this State, and it serves to remind us that our mineral resources are not confined to the baser metals, but that here in Oregon, as well as elsewhere upon the golden shores of the Pacific, the honest miner finds a full recompense for his hours of patient toil. The handle, also, you will observe, has been seasoned with oil manufactured by an Oregon mill, from the raw material grown

upon an Oregon farm, by an Oregon farmer, while the workmanship and mechanism displayed in its construction are but a just tribute to the mechanical skill, and the commendable industry of the people of our State.

And, Mr. President, in acting upon this occasion as the medium through whom this representative of the material resources of our State is conveyed to you, and to the corporation which you represent, as a tribute of respect and confidence from one of the citizens of Oregon, for the indomitable energy and perseverance which have enabled you to enter this day upon the practical work of the great enterprise for which you were incorporated, it may not be inappropriate in me to refer very briefly to the cause of our assembling together at this time. The occasion of our presence here to-day, is one of profound interest to the people of the State of Oregon. We are here for the purpose of celebrating the commencement of a new era in the history of her people. For the purpose of witnessing the laying of one of the great corner stones of that wealth, prosperity, influence, civilization and empire, that shall soon characterize our state as a bright particular star in the great family of states, for the purpose of inaugurating a work, which, under your fostering care, and management and the well-known energy and business and financial ability of the contractors represented here today in part by such men as Fline, Peabody & Co. of Boston and California, calling to their aid as they have, the best among the civil engineer corps of the Pacific coast, and, in fact of the nation promises fair

to move directly and rapidly on to successful completion, And a work, which, when completed, will be the great lift artery of our young and noble State, and along which, impelled by the irresistible and energising power of steam, will bound and rebound the great vitalizing currents of population, wealth, trade, internal commerce, and all that tends to make up and work out a glorious destiny for the worthy pioneers of our adopted State. We are here to celebrate the inauguration in Oregon of that system of internal public improvements, which in the Eastern Western and Middle States, has brought the best multitudes of these extensive regions into a close communion of trade interest and sympathy, and which has bound them together as with bands of fire and ligaments of steel, and to which, more than to any other system of internal improvements are the United States today indebted for their unparalleled growth in material wealth, prosperity and power. And therefore it is not strange that an event such as this should call from their homes, their firesides, their farms, their workshops, their offices, their parlors and their sitting rooms, this vast concourse of people who have come hither to approve by their presence and to witness the commencement of a work that must tell so deeply and so materially upon the future welfare not only of Oregon as a State, but also upon the individual interests of her people. And it is an occasion upon which the hardy pioneers, especially those who first braved the dangers but a few years ago, of these Western wilds, who first reared the standard of civilization along the picturesque banks of our beauti-

ful and far famed Willamette, and planted the first seeds of our present greatness and future glory, as a people, can rejoice with exceeding great joy as they look back over the conflicts and trials of the past, and now find all culminated in a new era of prosperity and greatness that must inevitably, and at no distant day, make Oregon as a State what her agricultural and mineral and manufacturing resources as well as the characteristic energy and go-aheadativeness of her people justly entitle her to—second to none west of the Rocky Mountains.

This, to some, may seem an extravagant prediction; but it is one, the truthfulness of which, will be demonstrated during the lives of many of those I now address. The sound of “the shovel” today, which is caused by the first breaking of ground by the “Oregon Central Railroad Co.” is but the legitimate echo of ten thousand similar sounds that are today reverberating along the eastern base of the Rocky Mountains and along the eastern and western slopes, and amid the Alpine caverns of the Sierras, and which shall continue to wake up the stillness of these solitudes, until from Portland, Maine, to Portland, Oregon, shall be one unbroken line of railway, along which shall move in one continuous phalanx the population and wealth of this mighty continent; but not only of this continent but of the continents of the world, and the islands of the sea. The Great Union Pacific which is now gradually but surely threading its way across our land like a huge serpent with a tongue of fire mocking at every opposition, when completed, as soon it will be, and of which the road begun this day

is but a legitimate extension, will be the great internal highway of nations, along which shall pour in one uninterrupted current the trades of Europe, Asia and America, as it passes on like a swift-winged messenger, according to the laws of its being, to circum-travel the civilized nations of men. And who is there, I inquire, in this vast audience, representing as it does every department of industry and trade, after contemplating the past history of our country, the unmistakable and truly prophetic signs of the present, can remain incredulous either as to the speedy completion of the work this day commenced or the influence and power which when completed it will have upon the prosperity of this people in developing our resources and building up our State to something like its true character and legitimate proportions? The revolutions wrought by the age of steam and the irresistible will and energizing power of the American people are so really fabulous in their appearance that were they not stamped in indelible and enduring characters upon the pages of American history, and in still more comprehensive language of imperishable truth upon the very face, the wide savannahs, the rugged mountains and the verdant hills of our favored land, their history would be treated as a fable emanating from the brain of a visionary. In 1754 when Dr. Franklin projected a plan for the union of the colonies, he proposed the city of Philadelphia as the metropolis, giving as a reason that it was situated about half way between the two extremes, and, as he said, could be conveniently reached even from Portsmouth, New Hampshire in eigh-

teen days. Had a child of the future risen up from the gray mists of coming time and said to Dr. Franklin, yea and two generations shall not pass away until Portsmouth and Philadelphia shall be within a few hours ride, the revelation would have been regarded even by that great (45) philosopher and statesman, as one never to be fulfilled. Even he who never told a falsehood, would have been disbelieved, if on the 30th day of November, A. D. 1782, when England conceded American Independence, the Father of our Country, the immortal Washington, had been enabled to lift the veil of the future that then flung its darksome folds across the coming greatness of our Republic and had been permitted to look down the great avenues of coming time, and gifted with the speech of prophecy, had turned to Adams and Jefferson and Hamilton and Randolph and others of his great compatriots, and said to them: I see coming slowly but surely on away down yonder in the dim distance upon the broad plain of futurity, thirty-five millions of people from all over the vast continent they are coming up, and from all nations beneath the shining sun—they are bearing in their hands great white banners, upon which are inscribed “Liberty and Progress”; and they are coming nearer and nearer, and very soon they will take the place of the three millions who now possess this land, and the eight hundred thousand square miles of territory which now comprise our possessions, I see expanded, on the north, south and west, into a mighty area of over three millions of square miles, bounded by co-terminous oceans, bearing upon its face everywhere the

unmistakable impress of civilization, of greatness, of power; and yet all this, fabulous as it might then have appeared, has come to pass in the brief period of three quarters of a century. And who can comprehend the progress that is to succeed?—with a country doubling its population every twenty five years, and inestimably rich in all that can tend to wealth—the mind becomes disturbed and the imagination lost in contemplating the future greatness of our country.

Twenty-five years ago the place where now lie those beautiful cities which loom up to our view on the eastern and western banks of the peaceful Willamette—Portland proper and East Portland—with their teeming thousands of busy population, their happy homes and joyful hearts, their school houses, their academies, their colleges, their temples of justice, their wealth, their trade, their trade, their commerce, their influence and their power, was a barren wilderness, a pathless swamp, a dismal solitude, threaded alone by the trail of the red man and echoing to no more inviting sound than the scream of the badger and the war whoop of the savage. Then this whole Pacific Coast, from Golden Gate to Behring's Straits that now flings its broad expanse of increasing greatness toward the gilded arch of our western sky, was one vast unbroken wild over which the bird of promise had never flown, and where the foot of civilization had never trod; but today, through the indomitable energy of our race, and by the magic power of works such as we are here today to inaugurate, the "Druidical silence" of that solitude has been broken, the forests have faded back into

the dim distance, the verdant arches that had been entwined by the fingers of the living God in the great centers of these primitive wilds, have been displaced by temples reared by the hand of civilization and progress. Rivers and lakes are spanned, the valleys rise up from their lowly beds, at the command of the voice of enterprise, and the snow-capped mountains of our golden coast are made to bow their everlasting heads in reverence and acknowledge the inevitable progress that is being made in all that tend to develop the resources of our heritage, and promote the general welfare of our race.

Receive then, Mr. President, this tribute of respect in the spirit of friendship and encouragement in which it is tendered, embodying and representing as it does, in the materials of which it is formed, many of the great elements of wealth that pertain to our present prosperity and greatness as a State, and which point forward along the line of coming years to a higher destiny and a more glorious exaltation. Take it and may the important work with it go forward with all the rapidity possible consistent with the magnitude of the enterprise. May the hands that wield it in the great cause of internal improvement be as tireless as the hands upon the dial of time, and may the minds, and energies, and resources, that direct the work in which you with it this day engage, be as unfailing as the light of the sun; and may the time soon come when from the city of Portland to the SOUTHERN boundary of the State there shall be

erected, through your energies and through the energies of the people, two great race tracks for the iron horse—the one upon the east—and the other upon the west side of our noble river—and when the smoke from the fiery nostrils of the competing steeds shall rise up from the angry chargers, and bending over shall mingle with each other and with the hot breath that ascends as a gloomy pedestal from the floating palaces ascending and descending our loved Willamette, forming an arch of beauty and grandeur, which in form and outline, though not in substance, shall beautifully symbolize the coming greatness and glory of our adopted State.

Mr. Mitchell's address was frequently interrupted by loud and prolonged applause.

PRESIDENT I. R. MOORES REPLY.

Mr. Mitchell: In accepting for the Oregon Central Railroad Company the very neat and appropriate present of Mr. Smith, for whom you act upon this occasion, we regard it as not only a token of personal esteem to the members of our corporation, but as an earnest of a hearty sympathy with the purposes and objects of this enterprise, which he entertains in common with all the people of the State.

In the use of this gift, at this time, we behold not only the commencement of a great work fraught with issues of momentous import to our young and rapidly growing State, but the dawning of a new era in the history of Oregon, that all here assembled will revert to in after

days as the time when the garb, the habits and methods of thought of the frontiersmen were cast aside, and we commenced the race for political and commercial greatness with our sister communities in this great Nation.

And the first spadeful of soil is removed we see unearthed a germ of progress just putting forth which shall continue to grow and expand, until the cities of this beautiful land will be busy centers of wealth and population, and teeming myriads shall occupy our valleys and mountains and develop the immense resources which as yet are scarcely appreciated. We feel that we can assure you that the work so auspiciously commenced today will only cease when the groaning granaries of our farmers will no longer need facilities for reaching the markets of the world, and the drowsy echoes of the Umpqua and Rogue Rivers will resound with the breathings of the iron horse on his rapid march in the work of founding agricultural and commercial empire.

In conclusion, and on behalf of the company, I thank you.

BREAKING GROUND.

President I. R. Moores, then descended from the platform, with the shovel in hand, and proceeded to the centre of the square where was driven the "first stake", and amid the acclamations of the multitude, threw out the first sod in the construction of the Oregon Central Railroad. The act was followed by three rousing and hearty cheers for the road, for the Directors and contractors, and "Hail Columbia" by the Cavalry Band.

COMMENCEMENT OF GRADING

The cheers of the people had scarcely died upon the air, when the laborers, getting the signal, fell to work upon the grading of the road. This was followed by a considerable stampede on the part of the people on that side of the crowd, to the spot, and the Chinamen were soon enclosed between two walls of interested spectators, each of whom seemed to have a deep personal interest in the matters going forward. Many of them procured shovels and joined in the work. Among the latter were a considerable number of young ladies who shared in the general enthusiasm of the hour. There were hundreds who perhaps never handled a shovel before, can boast in after years that they threw out dirt at the inauguration of the Oregon Central Railroad. In a few moments, and after most of the people had returned to the stand, Judge Upton was announced and as he came forward, was greeted with cheers.

HON. W. W. UPTON'S ADDRESS.

Ladies and Gentlemen: We have met to assist in ceremonies connected with events of the greatest importance to the citizens of Oregon. The ceremonies inaugurate a work of vast interest to us a people and to our State. The Great line of Railroad that sooner or later must connect Oregon with the Atlantic States, and pour treasures of produce from the Willamette Valley and our other rich valleys into the world's markets and return its equivalent, cannot be laid down at once; it is a work of time, labor and material. There must be a beginning and the day that begins it is not altogether

a day of ceremonies; not altogether an idle day. These ceremonies signalize the commencement of that work.

This large concourse is here to signalize public approbation of this effort, and to signify their willingness to put their shoulders to the wheel, and to contribute material aid to roll on this daring enterprise.

The people of Oregon are now fully alive to the great interest we have in railroad communication with the rest of the world. The recent action of the city of Portland in favor of railroad communication, shows the feeling on the subject in this city, and its almost unanimous approval by the people of Portland is but an index of the feeling that pervades the State. We no longer have any fears of too many railroads or too much railroad.

Although railroads have been in practical use for about half a century, it is during only a few years that we have had any real understanding of through lines of thoroughfares—of those great lines of railroad travel and freight that roll population and labor and life and activity and wealth into a new country, and make the West a part of the East, and the East common property with the West.

It is only ten or fifteen years that this matter has been at all understood, anywhere. How has this thing been learned? Those fortunate regions where it has been tried have found commerce and business and wealth poured in upon them like the rain from heaven. Those unfortunate localities that have neglected or refused these great arteries of trade, find themselves shut off from the marts of the world, and the rich products

of a bounteous soil lie almost useless in their granaries, or are struggling in an almost hopeless effort to make produce over-pay the expenses of its own transportation to market.

One of the most astonishing facts developed in modern times is the cheapness at which these great lines of railroad transport freight and passengers long distances. Men not in the business are astonished now when they learn that a full employed railroad can carry freight a thousand miles, cheaper than it can be put into and taken out of a merchant vessel. The lighterage, stowage and discharge of a cargo of merchandise costs more on an average than it costs a business road to transport the same cargo a thousand miles. It is the long lines of road with an immense business that can work at these rates. What was it, that in a period of ten years, changed the value of improved farms in Illinois, Wisconsin, and other Western States from an average of ten dollars an acre to an average of from fifty to sixty dollars per acre?

Railroad men discovered within that time that they could carry flour from Chicago to New York City for twenty-five cents per barrel and other products at similar rates. The ordinary and natural completion of four great lines of railroad fixed that price, and made a grain field in Illinois bring as much freight per acre, as a grain field a few miles from New York city. The grain fields in the West come up at once in price to near the value of Eastern farms. The farms enriched the railroads and the railroads enriched the farms. They de-

veloped each other and reaped mutual advantages.

The results of energy and completion of railroads on the routes from the Atlantic to the Mississippi has astonished all parties. How many miles of railroad could be paid for with the rise on real estate within that time in one of those states? a rise of property caused principally by the construction of railroads.

This increase in the value of land in Illinois alone, is sufficient to build and equip a line of railroad reaching twice around the earth. The same addition per acre to the value of the available lands in the Willamette valley would reach the sum of \$150,000,000. And yet there are some men who have not quite done with the query, "Will a railroad up the Willamette pay?"

In making estimates, some men leave the rise of real estate out of their figures. In the estimate just mentioned, reference is made to farming lands alone. A full estimate would add to these figures; the value of the towns that would spring up as the country improved, and the increase in value when our present villages shall be transformed into populous and wealthy cities. This increase in value will take place at some time. It is sure to come sooner or later. But if it is seen by the present generation, it will be because the present generation builds roads. Our first and most obvious want is population. We want every acre of choice lands under cultivation.

While on this subject of population, I want to say one word to you, Gentlemen Directors, on the subject of the kind of labor it your interest to employ. It is your in-

terest, in my opinion, to construct the road by means of the labor of good, able bodied white men. Men whose bones and sinews are made of beef and bread, and who can earn the money you pay them; and who will form a part of the permanent population of the country to patronize the road when it is done. You will get no more labor, in my opinion, out of the rice-fed Chinamen, for the same money. He may work cheaper but will do less work. He is not able to work at hard labor with the energy of a white man, and the employment of Chinamen does nothing toward populating the country, but retards it, and I am opposed to it for every reason. Population is everything to a railroad as well as to a country, and it is a question of deep interest to the road, as well as to the country.

Oregon has the resources to support an immense population. She holds out inducements to agriculture, as soon as a way is opened to markets, such as few countries hold out. Our crops turn out as largely for the labor bestowed, and are as of good quality, as those of any large tract of land in the world. Another marked feature of the country, and an important one, is that Oregon has never yet had a failure of crops.

None but those who have seen the impoverishing effect of repeated failures of crop, can realize the immense advantage of this feature of our soil and climate.

The 3,000,000 acres of land in the Willamette will support a larger population and pay well for a larger amount of labor than any other extensive tract of land. At most, every acre of it will justify high and thorough

cultivation and will increase the profits of tillage in proportion to the labor.

But it cannot be worked until a way is open to the markets. It cannot be worked while our produce has to pass through the houses of California merchants, and submit to the system of traffic their ingenuity has invited or while it in any manner takes the slow, circuitous and expensive route by way of the isthmus.

We are here today because the people of Oregon have begun to put their hands together and are striking a blow in the right direction.

The breaking of ground for a railroad up the Willamette valley is a first of a series of steps that is to link Oregon with the great centers of commerce and wealth, and give impetus to our exertions.

There is no danger of too many outlets of trade. There is no danger of too many roads. It has hardly ever happened that a railroad was built that was not needed. Such a thing is next to impossible.

I hope to see the two roads now about strating from this place move on with even and rapid pace for some proper point well up the valley and then join their forces, and push on in the most eligible course toward the Atlantic States.

To Oregon should belong some glory and some rewards connected with the continental roads. It was an Oregon man who first promulgated the idea of a continental road.

It was an Oregon man that first offered to build a road across the then wilderness continent for a strip

of unoccupied waste land. He vainly begged and petitioned Congress for the privilege. He was on the right track, but he was one generation in advance of the age. Like many great men, he got too far in advance of his forces. His heart was right, and his "head was level," but the world was about twenty-five years behind him, and did not come up in time. The World "failed to connect."

An Oregon man was the first to project a great National railroad, and if there is anything in the signs of the times Oregon men will not rest until the project becomes an accomplished fact.

We shall hail the first rapid puffing of the locomotive as a sign of destruction to the forests around the city of Portland. When the sound of the train reaches up the Willamette, and the ground begins to tremble beneath the tread of the iron horse, waste land will recede on the right and the left to give place to cultivated fields; the fern will be driven out, our timber will become merchandise, population will roll in, and the hum of industry will be heard from the Coast Range to the spurs of the Cascades, and from the Columbia to the sources of the Willamette. As the line emerges from the valley and leads on to join its iron bonds with those of the Central Pacific or the Union Pacific, the hum of industry will still keep pace with the shriek of the whistle and the jar of the train.

Railroads give life and activity to a country, and encourage men to work. The locomotive running through a productive country has a wonderful effect on the farms

in a little while. It drives all the brush out of the corners of the fences and roots out the stumps; it builds great barns on the farms; it straightens out the lines of the fences and puts a wire on the stakes and lays two rails on the wire. It gives the fence a good "worm" and turns all the five and six rail fences into eight rail fences.

When this great artery of trade is added to the network of iron roads that now almost annihilates distance on the Atlantic side, won't we visit "the settlements?" Won't the old homesteads on the Atlantic side get waked up? Won't the ladies and children have a millenium? But this thing is not half as far off as the millenium. The railroad men know that it will pay and they are not afraid of anything that will pay. They would saw up Mount Hood and sell it for whet stones if it would pay. They knew that a railroad will pay if everybody makes up her mind to travel and take her children. You know we are all going across on about the first train, and then all our friends on the other side, and most all our friends' friends will start about that time to come and see us. Everybody will be bound to travel, for everybody is waiting for the wagon. Every railroad man has found out that railroads pay in proportion to the quantity of business. They won't build a railroad where the farms won't rain produce, nor where the ladies and children won't travel on the cars.

They know that money lies in low prices, heavy freights and rapid business. They know they have got to arrange it so that everybody can afford to travel, and

then everybody will travel. They know that they can carry grain from here to New York for not more than three or four times what it now costs to furnish sacks for the grain, and that in time a healthy competition will compel them to do it at that rate. But if there is business enough to keep a road fully employed, they have no fear of such result.

There is nothing worth raising that will not at times be worth carrying long distances by railroad. There are persons here today who will live to see Oregon potatoes sold at handsome profits in the city of New York. There will be times when one or another of their crops fail in the east, that the East will want every particle that Oregon can spare. Nearly every year there will be some Oregon product—at times one of our staples—that will be in demand at prices that will make the freight a mere trifle in comparison. How soon there will be railroad connection from here to the other side is not for us to say; but it is plain to see that our material advancement depends very much on that question. Our active prosperity as a State will not be fairly and fully under way until that is accomplished.

To those gentlemen who have visited us with view to railroad construction, I think I may say we are not afraid of foreign capital. We want them to put all their capital in here if they will, and then come themselves and make themselves a home with us. We think by the time the investments are made and the business fairly under way, they will be captivated with this country and choose it as their own. We will welcome them heartily.

Judge Upton was followed by Hon. J. N. Dolph, who was warmly and frequently applauded as he proceeded.

HON. J. N. DOLPH'S ADDRESS.

Mr. President, Ladies and Gentlemen: This is a great day in the history of our State. That was a great day in the history of the Territory of Oregon, when the claims of Great Britain to the sovereignty of this soil were relinquished, and the stars and stripes—the emblem of our nationality—floated proudly over the pioneers of this the western wilderness, and the United States extended over them the protecting Aegis of her laws.

And the day that Oregon's star was placed in the Union, marked an event in our history well calculated to inspire those who had struggled against the disadvantages incident to pioneer life to rear here the standard of civilization and liberty, with enthusiastic hopes for the future.

And when a few years since we assembled to celebrate the completion of the telegraph line, that unites us by an electric nerve with the civilized world and when we compared the past with the then present and realized that the great distance which had separated us as it were from the great family of States, from home and its associations, was annihilated by enterprise and science, we congratulated each other and rejoiced and said that this is the great day in the history of our State.

But I see in the auspicious events of this day, no less cause for rejoicing. They are pregnant with the future prosperity, not alone of this city and the Willamette

valley, but of the whole State; to what extent no living man can say, but I believe far beyond what the most sanguine have predicted. Time will not permit—nor would it be appropriate on this occasion—to detail the advantages to be derived from the completion of this great work.

But looking at the advantages and surroundings of our state, and judging by the experience of the past, what a career of prosperity opens up in the future.

Glance at the history of the Empire State upon this matter of internal improvements; how has her resources been developed and her wealth increased by her wise policy in building railroads and canals.

About half a century ago DeWitt Clinton, inspired by foresight and sagacity, conceived the idea of uniting the waters of the Atlantic Ocean with the waters of the great lakes, and although men were found to scoff at the idea as visionary, New York engaged in the great work of constructing the Erie Canal. Today only has this great work been accomplished and enlarged until it is navigated by steam vessels, but two lines railroads running through the state from east to west, are found insufficient for the demands of commerce. And New York holds her proud position among the States, not so much by reason of the richness of her soil, or any natural advantages over her sister States, as by her sagacity to foresee the growth and wants of the Great West; and the enterprise of her people and by these works made the thoroughfare over which passes its commerce. Who can look back upon the history of

New York and see prosperity, wealth and power steadily keeping pace with the enterprise of her citizens and doubt the true policy of a State?

If time would permit, it would be interesting to trace the history of railroads in the Great West. To the West the railroad has been the pioneer of civilization.

Wherever its fiery courses speed, the wildness, as if by magic, "is made to bud and blossom as the rose." Land that before that found no market at the Government price, is transformed in a few months to valuable farms, and cities, and villages, like Jonah's gourd, spring up in a night.

Hitherto the time when we shall feel the inspiring energy of this great agency of prosperity has existed only in hope; today it requires no prophetic vision to behold its realization.

We are fast being bound to our common country by bands of iron and ties stronger than steel, in the Central Pacific Railroad fast hastening to a completion, and in the beautiful language of another "before the close of 1870, the iron horse will mingle at one run the smoke of his nostrils with the spray of both oceans."

When this great work is completed, San Francisco and New York will be nearer together than San Francisco and Portland; the commerce of the Atlantic and the Pacific will be bound together, and the plains over which it stretches and the mountains it scales, will wake from nature's solitude to the whirl and activity of advancing civilization, pouring over the great thoroughfares a continual stream.

A still more enterprise to this State is the Northern Pacific Railroad, uniting the great lakes with Puget Sound—destined to be the great thoroughfare across the continent over which the great Continent of Asia, with its six hundred millions of inhabitants, will pour its commerce.

When these great enterprises are completed, a tide of immigration from all other portions of the Union is sure to set in for the Pacific Coast. Not alone restless adventurers in search of fortune, having no interest in the country, but the hardy sons of toil, bringing their means and their families to establish homes for themselves and their children.

The ever-increasing tide of foreign immigration instead of being swallowed up in the great cities of the East, or even the broad prairies of the West (will pour over the Rocky Mountains into the fertile valleys—a source of wealth and an element of growth to the State.

Between the termini of these great thoroughfares—San Francisco and Puget Sound—lies our youthful State, containing all the elements of greatness, with a combination of advantages unsurpassed by any portion of the globe. Almost in sight in the great treasure vaults of nature, waiting the developing industry of the coming millions, is stored gold and silver sufficient to supply the most extravagant demands of the family of man. Mines rivalling in richness the wonderful grottoes of the Arabian Nights—waiting no Genii of lamp or ring to unfold their treasures, but ready to yield them up to honest enterprise and sturdy labor.

Coal and copper mines of untold richness and extent, wait to supply the wants and swell the wealth of the State. And already, but a few miles above us, upon the bank of the beautiful river that rolls at our feet, the crude ore of a more useful metal is being fitted to minister in ten thousand ways to the wants of mankind.

The hum of the loom and the whir of machinery is heard in our cities and villages, and enliven the solitude of our mountains and valleys.

We have a soil unsurpassed for richness that yields surely and bounteously to the labor of the husbandman.

Forest and prairie, hillside and valley, are ready to add their rewards of industry. We have a climate that challenges the world for salubrity, and situated as we are at the mouth of one of the great rivers of the continent, it requires but little forecast to predict for our State a commercial greatness second to no part of the Pacific Coast. The surplus products of our fertile plains will yet supply the mountain regions of the Pacific Slope, the markets of Europe, the teeming mililons of Asia, and the islands of the sea, while competing as they now do, with the home markets of the most distant states of the Union.

Commerce shall lay at our feet the products of every clime. The winged lightning, obedient to our bequest, flashes the news of the hours from the historic scenes of the Old World, under old ocean's bed, and across the continent, for our entertainment and profit.

Situated as we are at the farthest extreme of the Republic, we enjoy all the blessings of the general govern-

ment, while we bear but few of its burdens. We repose in peace, protected by the name and power of this great nation, while the clouds of war that lately hung over the land never rose above the mountain tops to scatter their horrors among us. Commercial reverses and money panics spend their force before they reach our shores, and we rest secure, undisturbed by a thousand causes that overwhelms in disaster many of our sister States. Yet the State languishes. One thing is needed to develop its resources and secure all these advantages, and that is cheap transportation, the completion of the great work, the commencement of which we now celebrate, a railroad connecting these two great transcontinental roads.

When this is completed, the immigration over both these great routes will pour into our State, a uniform market will be brought to our doors, cheap transportation will secure remunerative prices for our surplus products, and the steam whistle of the locomotive that first wakes up the slumbering energies of the State and start it onward, is an unexampled career of prosperity. Twenty years from this time, two lines of railroads running through the state will be insufficient for the demands of the commerce of the State.

This road will be built. The ability and known energy of the contractors give promise that the work will be pushed forward to completion without delay; and it be not inappropriate to notice here that the first steamboat that ever plowed the waters of the upper Columbia was the *James F. Flint*, in honor of the worthy gentle-

man of that name, now here representing the contractors.

May I not speak for this company, the co-operation and assistance of this whole state, the usual contributions of its citizens and the liberal aid of the State and National Government. In no other way can money be more usefully or remuneratively expended.

The money spent in war, instead of increasing the national wealth, and advancing the national prosperity, leaves whole districts of country depopulated, and devastated—the people in poverty, the nation in debt; but the money expended in developing the resources of a nation, in facilitating its commerce and uniting in ties of common interest its remotest territory, adds to its wealth, increases its prosperity, and provides guaranties for its future stability.

The money expended to rear costly capitol and other public buildings and monuments may be expensive luxuries without adequate returns for the expenditure.

While the pyramids of Egypt stand as monuments of the astonishing power and grandeur of the Egyptian monarchy, more than two thousand years before the Christian Era, they also stand as monuments of the folly of their builders.

But the work you seek to build will stand as a monument and public spirit, sagacity and energy of its projectors and builders, dispensing its blessings to the citizens of the State and their descendants.

Fellow citizens, looking from this small beginning to the future of our State, when, as I confidently believe,

our most ardent hopes shall be more than realized, I mingle my congratulations with yours.

Upon the conclusion of Mr. Dolph's address, brief, congratulatory speeches were made by Messrs. J. H. Reed, Joel Palmer and others. At about three o'clock P. M., the ceremonies came to an end and the people retired, full of hope that they had witnessed the beginning of a work which should bring to Oregon all the wealth and greatness so confidently predicted by the several speakers.

Office Chief Engineer, Portland,
Oregon, Thursday evening, April, 17,
1868.

The board met again in the evening the same present as heretofore.

Minutes of the previous meeting were read and approved.

The committee to draw up an address to the people of Oregon on the subject of railroads made a report which was adopted and 7000 copies were ordered to be printed for distribution.

The committee on contracts made a report which after consideration was back to the committee with instructions to consult with Messrs. S. Ellsworth and J. H. Mitchell, attorneys & make a further report tomorrow evening.

On motion the board adjourned until tomorrow morning at 10 o'clock.

Friday morning, April, 17th,

Committee on Ways and Means made a report which

was laid on the table.

Committee on finance reported the expenses of the celebration of yesterday at \$345.50—which was accepted and the amount ordered paid.

They also reported an account of the money expended by S. G. Elliott for the benefit of the company, in amount \$1575.24, which report was adopted, and the said amount was ordered paid.

Committee to define duties of the various standing committees and suggest a uniform plan of action made the following report which was adopted.

“Your committee to whom was referred the duty of defining the duties of the standing committees, etc. would make the following report:

It shall be the duty of the Finance Committee to audit and endorse their allowance on all bills and claims before payment, and shall also have power to inspect the books & accounts of the company.

The Committee of Ways and Means shall have the general oversight of the progress of the work of the company and shall from time to time devise and adopt and recommend to the Board of Directors such means and modes of conducting the affairs of the Company and of meeting its financial requirements and generally of promoting its best interests as they may deem advisable.

It shall be the duty of the Executive Committee to represent the Board of Directors at all times when the Board is not in session in all matters relating to the business of the company requiring immediate attention:

Provided, that its acts shall be subject to the approval

and confirmation of the Board.

And We recommend

That the Board of Directors be constituted a committee for the purpose of securing material aid, each being empowered to make sales of stock and solicit donations and other aid, in such uniform mode and manner as may be prescribed and that the resident directors of each county be especially authorized to present the claims of the company to county, city or other municipal corporations through which the road may pass in such manner and at such times as with all convenient speed they may deem proper.

(Signed) A. M. LORYEA,
S. EIIsworth.
T. Mc F. PATTON.

On motion the Secretary with the assent of the President was authorized to procure books, stationery and material necessary for the Company, and for the use of its officers.

On motion J. H. Mitchell was nominated as attorney and counsellor for the corporation and a vote being duly taken, he was unanimously elected to said position.

On motion of Mr. Loryea it was ordered that the Secretary purchase 500 copies each of the numbers of the Herald, Oregonian and Enterprise containing the account of the late celebration.

On motion the secretary of the company was instructed to publish in the daily papers of this city, the following.

Resolved

That the Oregon Central Railroad Company fully appreciates the interest taken in their enterprise by the public at large as manifested at the Celebration of breaking ground April 16th, 1868; We consider this an earnest of the success that attends undertaking, and the secretary is instructed in the daily press of this city to return our thanks to the efficient marshlls and aids; to the Chief and assistant engineers and the Fire Department of the Cities of Vancouver and Portland and to the Fenian and Washington Guards and all others who assisted on that occasion, as well as the P. P. Co., to Capt, Turnbull and the Ferry Company for the reduction of fare which enabled so many from abroad to visit the City and attend the exercises.

The committee on contract reported this "In view of the fact that the proposed contract embraces many provisions in regard to which a satisfactory conclusion cannot be drawn and in regard to which it is deemed advisable to have the counsels and co-operation of friends of this enterprise in Southern Oregon, your committee recommends that no action be taken at this time on the proposed contract, but that, in lieu thereof the company propose and offer to A. J. Cook and Co. to enter a contract with them at this meeting, to the effect that in letting a contract for the construction of this road from the terminus of the present contract to the California State Line the O. C. R. R. Co. will give the preference & refusal, the terms & price being equal, to said A. J. Cooke and Co. before all other bidders for said contract and that such construction contract will be entered into

as soon as the details of said contract can be reasonably agreed on between the said contracting parties, and that, for that purpose, a meeting of directors shall be held, fourteen days from this date.

(Signed) T. Mc F. PATTON.

H. BOYD.

A. F. HEDGES.

On motion of Mr. Ellsworth the following was adopted:

“Resolved

That the President immediately prescribe and place in the hands of each Director a uniform plan of applying to the people of Oregon for aid.

On motion the President, Vice President and Secretary were appointed a committee to compile a statement of facts in regard to the history and organization of this company to be published for the information of the people of Oregon.

On motion Board adjourned until 2 o'clock P. M.

Friday April 17th, 2 P. M.

On reassembling the same members were present, the president in the chair.

The President reported, in answer to the requirements of the Board, recorded on the previous page, that after consultation with the Corporation Counsel, he had adopted the following forms for obtaining donations and subscriptions for stock and that stock books containing such printed forms properly inscribed therein would be furnished to each Director.

We, the undersigned, do hereby severally purchase,

subscribe for, and take the number of shares set opposite our names respectively of Non-Assessable Capital Stock in the Oregon Central Railroad Company, incorporated in April, A. D. 1867, at Salem, Oregon, and we do hereby agree to and with said Corporation to pay it cash in hand in United States coin, or its equivalent, for such shares of stocks so by us purchased, subscribed for, and taken, as hereinafter stated, the sum of ten (\$10) per share, upon the delivery to us respectively of such Stock by such corporation.

We, the undersigned, in consideration of the benefits accruing to us severally from the public improvement which the Oregon Central Railroad Company, incorporated in April, A. D. 1867 at Salem, Oregon, is engaged in making, in the construction in this State of the Oregon Central Railroad; and for the purpose of aiding in the construction of such Railroad, do hereby severally give and donate to said Oregon Central Railroad the moneys and property, real and personal, specified and described over our signatures hereinafter in this book; And we do hereby agree to pay such sums of money so by us respectively donated and convey and deliver such property, real and personal, so by us respectively donated, to said Corporation upon the terms, at the time, and upon the conditions as specified by us severally hereinafter.

Mr. Ellsworth offered the following:

Resolved

That the stock of the company subscribed by and in the name of the Company, be and the same is hereby offered for sale, at ten dollars per share. Such payment

of ten dollars to be in full payment therefor and thereupon certificates to be issued and upon the payment of ten dollars for each share subscribed to the stock, the same shall be deemed fully paid up and certificates issued.

Which was adopted.

Finance Committee reported that they had audited the following accounts and recommended that the same should be paid & they were so ordered to be paid.

General Bill of Celebration	\$345.50
S. G. Elliott—expended for Co.	\$1575.24
A. G. Walling	101.50
H. L. Petlock	50.
Oregon Herald	25.
A. Taylor	8.

Friday April 17th, 7 P. M.

Committee of Ways and Means respectively made the following report, which, with amendments herein incorporated, was adopted. The Committee of Ways and Means respectfully recommend that,

1.. Ways and Means be devised for meeting the current expenses of this corporation.

2... That the President be paid for his undivided attention to the duties of his office and the advancement of the interests of this Company, Forty Five Hundred (4500) Dollars per annum, which sum shall be in full for all services and travelling expenses within this state and shall be payable out of a salary fund when same is appropriated and set apart by the Board of Directors.

3... That the Vice President be paid such sums as may be allowed from time to time by the Board.

4. That the Secretary be paid the sum of Eighteen Hundred dollars (1800) Dollars per annum, conditioned as in section 2.

5. That the Treasurer be paid the sum of One Thousand Dollars (\$1000) per annum for the performance of the duties appertaining to the duties of his office.

6. That the attorney of this corporation shall be paid for his services, including compensation to other attorneys or counsel he may deem necessary to employ, the sum of five thousand (5000) Dollars which shall be in full, to the thirty first (31) day of December, 1868.

7. Each member of the Executive Committee, other than those receiving a salary as is herein provided, be paid the sum of eight (8) dollars per day for each day actually employed, and no further allowance for traveling or other expenses.

8. Each Director, other than for whom provision is made herein, shall receive the sum of eight (8) Dollar per day for the time necessarily devoted to the business of the Company.

9. All salaries and per diem to be paid quarterly, commencing from the first of April, 1868, except as is provided in Section six (6).

10. That the President, Treasurer, and Secretary be required to give bond with two sureties, as hereinafter stated, for the faithful performance of their respective duties.

The President shall give bonds in the sum of ten thousand (10000) Dollars.

The Treasurer shall give bonds in the sum of Fifty

Thousand (50,000) Dollars.

The Secretary shall give bonds in the sum of Ten Thousand (10,000) Dollars.

On motion of Mr. Cooke the following resolutions.
“Resolved, That this Board ratifies the action of the President and Corporation Counsel in commencing an action State of Oregon ex Relation

vs.

(see page 40)

I. Gaston and others

And they are instructed to prosecute the same to a final judgment.”

was unanimously adopted.

Mr. Ellsworth moved that when this Board adjourn it do so to meet at Salem, Thursday, April 28th, which was adopted.

Mr. Loryea offered the following

Resolved,

That no information of the acts of this Board shall be adjudged without the order of the Board.

Which was adopted.

On motion it was

Resolved,

That the Oregon Central Railroad Company will carefully preserve as a memento of the commencement of its great work, the very appropriate present of S. M. Smith, Esq., the shovel manufactured wholly of materials native to our State—and we tender to Mr. Smith our thanks and acknowledgements, not more for the gift so appropriately devised, than for the confidence and sympathy that prompted its bestowal. It will remain with us, a proof

of the great natural resources of Oregon as well as the taste, enterprise and good will of the donor.

And it was further

54—Brief (, 6*
Resolved

That the Secretary be requested to forward to Mr. Smith a certified copy of these proceedings.

And on motion the Board adjourned to meet at Salem
Tuesday April 28th.

S. A. CLARK,
Secretary.

State of Oregon)
) ss.

County of Marion)

We, George L. Woods, F. A. Chenoweth, John F. Miller and S. F. Chadwick, Directors Elect of the Oregon Central Railroad do hereby swear that we will faithfully and honestly discharge the duties of the office to which we have been elected to the best of our ability. So help us God.

GEO. L. WOODS
F. A. CHENOWETH
JOHN F. MILLER
A. F. CHADWICK

Subscribed and sworn to before me this 28th day of
April, A. D. 1868.

Witness my hand and official seal the day
and year above written.

(Notary Seal) (Govt. stamp) T. Mc F. PATTON.
Meeting of Board of Directors.

Salem, Oregon, April 28th, '68.

The Board met at 6½ P. M. pursuant to adjournment, present Mr. President, Messrs. Cooke, J. H. Moores, Ellsworth, Henderson, Douthitt, Conser, Lovejoy, Patton, Hedges, Parrish, Directors, already duly qualified and also Messrs. Geo. S. Woods, F. A. Chenoweth, and J. F. Miller, who were immediately sworn in as Directors by T. Mc F. Patton, a notary public, their oath and his certificate thereto being duly recorded on page 56 of this Journal. Mr. Mitchell was also present. Minutes of last meeting were read and approved.

The committee appointed to prepare statement of facts for publication reported. An address to the people of Oregon with a statement of facts as to organization and progress of the company which were read and on motion, were referred back to the committee, Messrs. Chenoweth, Ellsworth and Chadwick being added thereto.

Reports of Chief Engineer were read as to the amount of interest due contractors on the first of January, 1868, and his report of his operations for the month past in the construction of the road, which reports, were, on motion, referred to the committee on Finance.

On motion, after considerable discussion, it was decided to have a railroad meeting held in this city tomorrow evening to be addressed by prominent gentlemen.

On motion Messrs. Patton, Douthitt, & Woods were appointed a committee of three to prepare a programme for action on that occasion.

On motion of Mr. Ellsworth the proposal of A. J. Cooke and Company to contract for construction of road

through southern Oregon to California Line, wae referred again to the committee which had it under consideration, Mr. Chadwick being added thereto.

Mr. Hedges moved to add Mr. Ellsworth thereto which was carried.

Mr. Mitchell presented communication from J. Gaston, styling himself President of O. C. R. R. Co., Portland, which was received by him from A. C. Gibbs, Esq., which communication was read and referred back to Corporation Attorney, Mr. Mitchell, the same purporting to be a proposal for settlement of difficulties between the two companies.

On motion the board adjourned until tomorrow at 9 o'clock.

Wednesday morning, April 29th, 1868.

The board met pursuant to adjournment present as of yesterday. Committee on Programme made report which was received and the committee discharged.

Committee on contract for road through Southern Oregon made report, which was made the especial order for this afternoon at 2 o'clock.

Counsel for the corporation, J. H. Mitchell, reported on the propositions for settlement of difficulties with the Gaston Company, which was received and Mr. Mitchell was requested to draw up a communication in answer to the same.

Statement of facts was read and referred to committee of three Messrs. Chenoweth, Ellsworth and Henderson.

Wednesday afternoon April 29

Salem, Oregon, April 28th, '68.

The Board met at 6½ P. M. pursuant to adjournment, present Mr. President, Messrs. Cooke, J. H. Moores, Ellsworth, Henderson, Douthitt, Conser, Lovejoy, Patton, Hedges, Parrish, Directors, already duly qualified and also Messrs. Geo. S. Woods, F. A. Chenoweth, and J. F. Miller, who were immediately sworn in as Directors by T. Mc F. Patton, a notary public, their oath and his certificate thereto being duly recorded on page 56 of this Journal. Mr. Mitchell was also present. Minutes of last meeting were read and approved.

The committee appointed to prepare statement of facts for publication reported. An address to the people of Oregon with a statement of facts as to organization and progress of the company which were read and on motion, were referred back to the committee, Messrs. Chenoweth, Ellsworth and Chadwick being added thereto.

Reports of Chief Engineer were read as to the amount of interest due contractors on the first of January, 1868, and his report of his operations for the month past in the construction of the road, which reports, were, on motion, referred to the committee on Finance.

On motion, after considerable discussion, it was decided to have a railroad meeting held in this city tomorrow evening to be addressed by prominent gentlemen.

On motion Messrs. Patton, Douthitt, & Woods were appointed a committee of three to prepare a programme for action on that occasion.

On motion of Mr. Ellsworth the proposal of A. J. Cooke and Company to contract for construction of road

through southern Oregon to California Line, was referred again to the committee which had it under consideration, Mr. Chadwick being added thereto.

Mr. Hedges moved to add Mr. Ellsworth thereto which was carried.

Mr. Mitchell presented communication from J. Gaston, styling himself President of O. C. R. R. Co., Portland, which was received by him from A. C. Gibbs, Esq., which communication was read and referred back to Corporation Attorney, Mr. Mitchell, the same purporting to be a proposal for settlement of difficulties between the two companies.

On motion the board adjourned until tomorrow at 9 o'clock.

Wednesday morning, April 29th, 1868.

The board met pursuant to adjournment present as of yesterday. Committee on Programme made report which was received and the committee discharged.

Committee on contract for road through Southern Oregon made report, which was made the especial order for this afternoon at 2 o'clock.

Counsel for the corporation, J. H. Mitchell, reported on the propositions for settlement of difficulties with the Gaston Company, which was received and Mr. Mitchell was requested to draw up a communication in answer to the same.

Statement of facts was read and referred to committee of three Messrs. Chenoweth, Ellsworth and Henderson.

Wednesday afternoon April 29

Two o'clock.

Board met pursuant to adjournment present as before.

Statement of Facts, as amended by committee, with one sentence struck out, was adopted.

Gov. Woods offered the following

Resolved

That there be a special committee of three to inquire into and report an early day a suitable plan of operations for Feeders or Branch Roads with a view to contracting for speedy construction of the same and that the same committee have power to employ, under the approval of the Board, President, one or more additional canvassers for aid to the company on such terms as they may deem advisable.

Which resolution passed.

Messrs. Woods, Douthit and Miller were appointed such committee. Committee to whom was referred the proposed contract, with A. J. Cooke & Co. to construct road through Southern Oregon, reported in favor of same with some amendments which they reported. Their report was received and adopted and the President and Secretary were instructed to prepare such a contract and execute the same with such amendments embodied therein, as follows.

Contract.

Memorandum of an agreement made this 12th day of May in the Year of our Lord, One Thousand Eight Hundred and Sixty Eight, by and between the Oregon Central Railroad Company, organized under and in ac-

cordance with the general Laws of the State of Oregon, of the First part and the Firm of A. J. Cooke and Company of the Second part, Witnesseth

That whereas the party of the first part own the right, privilege and franchise for constructing, equipping and running a railroad from Portland in the State of Oregon, South to the California Line, and whereas the said company of the first part did contract with the party of the second part to build one hundred and fifty miles of the road, commencing at Portland and extending up the Willamette valley a distance of one hundred and fifty miles, said road to be completed within five years from the date thereof, and whereas the party of the first part are desirous of extending the road to the State line between Oregon and California and as a means of securing the early completion of the same,, have entered into the following agreement with the said firm of A. J. Cooke & Co. upon the following terms the party of the second part doth agree and hereby agrees with the party of the first part to build and equip two hundred and ten miles of railroad more or less, to or near the State line, with all necessary rolling stock from the head of the Willamette Valley, commencing at the terminus of the first division to one hundred and fifty miles, and to continue the construction of the same to the South boundary line of Oregon, as soon as the first division shall be completed, for the sum of twelve millions, one hundred and twenty eight thousand dollars (\$12, 128,000) reckoned at gold or specie value, that is to say, if payment, from time to time be made in

National currency, no so called, it shall be in payment for so much only as the (62) same is worth in gold at the time of said payment, and so it shall be reckoned with anything else that may be received in payment, at the time of such payment.

And the party of the second part doth further agree with the party of the first part to build and equip with rolling stock complete for the working of the, same, that is to say, the road shall be built upon a uniform gauge of four (4) feet, eight (8) inches and one half ($\frac{1}{2}$), the maximum grade not to exceed eighty feet per mile except 12 miles through the canon, which twelve miles of grade shall not exceed one hundred feet per mile: and a minimum curvature of ten (10) degrees: The width of the road bed to be eleven feet on the surface. The iron used shall be the best quality known as T rail, weighing at least 50 lbs. per linear yard: The ties shall be of the best wood to be obtained for strength and durability not less than six by eight inches, and 8 ft. in length, to be laid at the rate of two thousand and six hundred and forty (2640) per mile.

The amount of rolling stock shall consist of ten first class locomotives, weight not less than twenty five tons each, to be furnished at the rate of one for every-twenty miles. And twenty-five first class passenger cars, furnished at the rate of one for every ten miles, four baggage cars, forty box cars and twenty platform cars.

The contractors shall provide suitable stations and

turn outs at various points to be designated by the company, at the rate of one for every ten miles, water tanks as often as one for every twenty miles when water can conveniently be had. At the large towns, suitable building shall be erected for the accommodation of passengers and freight, also engine house of a sufficient capacity for the housing of all engines.

The President of the Company and the Chief Engineer of Construction shall compose a commission whose approval shall be necessary for the acceptance of the road and the contractors shall have the right and free use of the railroad from Portland to the extreme southern terminus for the transportation of all the material required in said work, also as well, all men, horses, mules, cattle, sheep, hogs, & provisions of any and every kind required by said party while constructing said road, also all iron, iron rails, bars, castings, spikes, chains, switches, machinery, frogs, car wheels, and all timbers for bridges, trestle work, cattle guards, cross ties, and timber for all depots, stations and all other material required or to be used, with everything else required by said contractors in the construction of said road, until said two hundred and ten miles of said road, or reaching to the California line, be it more or less, has been completed, at the same rate per mile.

And the party of the second part shall be entitled to the earnings of the road until each section of twenty miles is accepted by the company.

And the party of the first part promises, covenants

and agrees, with the party of the second part, to issue or cause to be issued, the first mortgage, gold bearing, railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage on said two hundred and ten miles, or reaching to the California line, be it more or less, and on the rolling stock of the same, interest on said bonds to be made payable at the rate of seven (64) per cent per annum as aforesaid, and the said party of the first part agrees that said form and sums—and to be endorsed if need be to make the same negotiable & Satisfactory, and that the engineers employed are to be paid by the party of the second part, and the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company. And the party of the first part further agrees to execute a mortgage of thirty-two thousand dollars per mile as a first mortgage on the whole distance of two hundred and ten miles commencing at the terminus of one hundred and fifty miles at the head of the Willamette Valley, extending to the state line between Oregon and California, and also, to execute a second mortgage for twenty-five thousand seven hundred and fifty-two (\$25,752.00) Dollars per mile.

The party of the first part promises and agrees, to execute the first mortgage bonds, at the rate of twenty-five thousand (25,000 Dollars per mile, and deliver one million dollars of the same to the party of the second part, as soon as the said party of the second part

shall report themselves in readiness to enter upon the commencement of the construction of the road, under this contract and exhibit satisfactory evidence that they have purchased material and stock equal in value to the amount of bonds so issued, and to make advancement of bonds at the rate of twenty-five thousand dollars per mile, for a distance of fifty miles in advance of work on the road whenever the party of the second part may request the same, and give evidence as required above as to the purchase of material, or of work performed, and make (65) monthly settlements upon the report of the Chief Engineer, reserving only one tenth part of the amount reported to be due by said Engineer until a distance of twenty miles shall be completed, when the company shall pay the full amount of fifty-seven thousand seven hundred and fifty-two dollars, per mile to said party of the second part, as provided in the first part of this contract. It is understood that the company will exert itself to obtain aid from the State of Oregon to assist in the building of this road. It is further agreed that the stock shall be increased to eleven millions of dollars, and three millions of preferred stock shall be executed and delivered to the contractors as soon as the first distance of one hundred and fifty miles shall be completed. The stock shall be in the following form to-wit:

Capital Stock No.	Second Series	Shares
\$11,000,000. The Oregon Central Railroad Company.		
Salem	Marion County	

and agrees, with the party of the second part, to issue or cause to be issued, the first mortgage, gold bearing, railroad bonds of the Oregon Central Railroad Company, the payment of which shall be secured by a bottom mortgage on said two hundred and ten miles, or reaching to the California line, be it more or less, and on the rolling stock of the same, interest on said bonds to be made payable at the rate of seven (64) per cent per annum as aforesaid, and the said party of the first part agrees that said form and sums—and to be endorsed if need be to make the same negotiable & Satisfactory, and that the engineers employed are to be paid by the party of the second part, and the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company. And the party of the first part further agrees to execute a mortgage of thirty-two thousand dollars per mile as a first mortgage on the whole distance of two hundred and ten miles commencing at the terminus of one hundred and fifty miles at the head of the Willamette Valley, extending to the state line between Oregon and California, and also, to execute a second mortgage for twenty-five thousand seven hundred and fifty-two (\$25,752.00) Dollars per mile.

The party of the first part promises and agrees, to execute the first mortgage bonds, at the rate of twenty-five thousand (25,000 Dollars per mile, and deliver one million dollars of the same to the party of the second part, as soon as the said party of the second part

shall report themselves in readiness to enter upon the commencement of the construction of the road, under this contract and exhibit satisfactory evidence that they have purchased material and stock equal in value to the amount of bonds so issued, and to make advancement of bonds at the rate of twenty-five thousand dollars per mile, for a distance of fifty miles in advance of work on the road whenever the party of the second part may request the same, and give evidence as required above as to the purchase of material, or of work performed, and make (65) monthly settlements upon the report of the Chief Engineer, reserving only one tenth part of the amount reported to be due by said Engineer until a distance of twenty miles shall be completed, when the company shall pay the full amount of fifty-seven thousand seven hundred and fifty-two dollars, per mile to said party of the second part, as provided in the first part of this contract. It is understood that the company will exert itself to obtain aid from the State of Oregon to assist in the building of this road. It is further agreed that the stock shall be increased to eleven millions of dollars, and three millions of preferred stock shall be executed and delivered to the contractors as soon as the first distance of one hundred and fifty miles shall be completed. The stock shall be in the following form to-wit:

Capital Stock No.	Second Series	Shares
\$11,000,000. The Oregon Central Railroad Company.		
Salem	Marion County	

\$3,000,000 preferred
stock (non
assessable) Sold interest
bearing.

Vignette
and \$8,000,000
common or
assessable
stock
—— shares
\$ each

State of Oregon April 1868.
This certifies that Albert J.
Cooke and Co. are entitled
to shares of the Capital
Stock of the Oregon
Central Railroad Com-
pany, transferable on the
books of the company sub-
ject to the provisions of
the bylaws by endorse-
ment hereon and surrender
of this certificate. The
holder of this second series
certificate is entitled to
seven percent yearly inter-
est in gold upon the
amount of \$3,000,000, ad-
vanced by the contractors
as a working capital under
the second contract in the
construction of the com-
pany's road. Said second
series certificate of stock
are issued as collateral se-
curity for that amount and
to be non-assessable, the
payment of which is secur-
ed by a Resolution in the
following form, "Resolved
by the Board of Directors

of the Oregon Central Railway, that the President and Secretary (66) are hereby requested to execute \$3,000,000 of non-assessable, preferred stock, and deliver the same to the contractors as part payment for the construction of the road, and as a collateral security for monies advanced by said contractors, and as a working capital, said stock to be nonassessable, and to bear interest at the rate of seven per cent per annum payable in gold coin, and there is hereby set apart as a sufficient amount out of the net earnings of the second division of the road, extending from the end of the first division to the Oregon State line, to pay the same.

(Vignette)

Secretary

President.

The parties hereto agree that the terms of this contract shall come in force as soon as the first one hundred and fifty miles shall be completed, and that it shall be completed within five years from that date.

And in relation to all other terms, stipulations, covenants, and agreements of the foregoing contract, it is hereby expressly agreed, that on the completion of the present contract, for 150 miles of road, it shall be optional with the O. C. Railroad company, party of the first part, hereto, to surrender to the contractors the road herein provided for, and assign to them all the rights of the company therein, in which case the said contractors shall accept the same in full satisfaction of all claims arising under this contract, as

against the said company, or their road of 150 miles, so now being constructed, all facilities within their power shall be extended by said O. C. R. R. Company to enable said contractors to hold over and operate said extension of said road under the laws of Oregon.

(End of Contract)

On motion of Mr. Woods it was resolved

That the O. C. R. R. Company hereby accepts any grant of land which may have been made or may be extended to said company, and our agent, A. M. Loryea, is hereby fully empowered to present a duly certified copy of this Resolution to the proper authorities as provided by law to be filed.

On motion of Mr. Ellsworth it was

Resolved

That Dr. A. M. Loryea is hereby authorized to use the name of this company in bringing any action, suit or proceeding, in any of the Eastern States, against any person or persons, or for any purpose he may deem proper for the best interests of the company, provided such use of the name shall be without any cost or liability for expense to the company unless hereafter consented to.

The finance committee made a report that the following accounts had been examined by them and approved as correct.

American Exchange Portland	\$ 54
Kelly Portland	10
Oregon City Enterprise	25
Printing bills	6

A. J. Cooke & Co.

Amt. due on construction

as per estimate of Ch. Engineer 13,200.00

A. J. Cooke & Co.

For interest paid on bonds up

to January 1, 1868..... 10,500.00

On motion the above accounts were allowed and it was ordered that they should be duly paid.

On motion of Mr. J. H. Moores it was ordered that canvassers shall be authorized to receive land at a fair price in payment for stock subscription and that the value of such land shall be assessed by three of the Directors of the company.

The President introduced supplemental contract which it was deemed advisable to enter into with A. J. Cooke & Co. to define the provisions of existing contracts which, after an animated discussion, was laid on the table.

The corporation counsel remarked concerning the difficulties of securing right of way in some instances.

Mr. Miller moved that the Corporation Counsel be authorized to commence suits as he may deem necessary, which motion carried.

Mr. Mitchell, counsel, reported that he had prepared an answer to the proposition of the Gaston company which was read and on motion the secretary was instructed to forward the same, duly certified to said company, through the medium of our said counsel, and retain the original copy.

On motion of Mr. Ellsworth it was

Resolved, that until otherwise ordered regular meetings of the Board of Directors shall be held at the office of the company on the second Tuesday of each month at 7 P. M. commencing in June.

On motion Board adjourned.

S. A. Clarke,

Sec'y.

Tuesday June 9.

The Board met at office of the Company in Salem, at 7 o'clock P. M. There were present I. R. Moses, President, Messrs. Cooke, Woods, Moore, Conser, Parrish, Ellsworth, Chenoweth, Henderson, Hedges, Lovejoy, Douthitt, Miller, Patton of the Directors, J. H. Mitchell, Esq. counsel, F. R. Brooks, Esq., Ch. Engineer & Mr. S. G. Elliott of the contractors.

Minutes of the last meeting were read and approved.

On motion Board adjourned until tomorrow morning at 8 o'clock.

Wednesday 8 o'clock A. M.

Board met pursuant to adjournment present as of yesterday. Committee on Branch roads, etc. appointed at last meeting of the Board, reported by Mr. Douthitt their chairman, that they had deferred action until after this meeting.

On motion of Mr. Chenoweth by consent, Order No. 7, of "unfinished business" was taken up, and the Board proceeded to discuss the routes of the Road to be located through Sim and Benton counties.

At the suggestion of Mr. Mitchell, a committee of

two, consisting of Messrs. Chenowith & Douthitt, was appointed, to consult with S. G. Elliott and report plan for action in that matter. Pending the action of the said committee, which retired to the Secretary's room for consultation, the Board took a recess. After which the committee reported that they proposed to have executed the supplemental articles of contract with A. J. Cooke & Co. proposed at the last meeting of the Board in April, and to embody the plan of constructing two trunk roads, one on the East and one of the West side of the Willamette, in Linn and Benton counties. A draft of said supplemental articles was submitted and amended as to point of junction of said roads, south, and report as amended was adopted. The secretary was instructed to have duplicate copies of said supplemental articles prepared.

Report of the chief engineer as to his operations for the month of May was read and ordered to be placed on file.

The secretary received a communication from Mr. Jas. P. Flint of San Francisco, with proposition from Western Union Telegraph Company for construction of Telegraph line along the company's road, which on motion was referred to a select committee consisting of Messrs. Ellsworth, Miller & Hedges.

Sec'y. read communication from E. W. Hanus, claiming to be Secy. of O. C. R. R. Co. of Portland.

Mr. Douthitt moved to refer to select committee of three, to report this evening, carried.

Messrs. Douthitt, Chenoweth, & Lovejoy were appointed as such committee.

Board adjourned until 2 P. M.

Two o'clock P. M.

Com. on communication received from "E. W. Hanus, Sec'y. of O. C. R. R. Co.," made a report that the Secretary of our Board be directed to notify said Hanus of this action."

Mr. Ellsworth offered to substitute the following:

Resolved: That the Secretary is authorized to notify E. W. Hanus that his communication is received, and upon receipt of information that the alleged corporation of which he is acting secretary have appointed a committee of conference if they desire to do so, the subject will be fully considered by our Board of Directors, of appointing a like committee on our part.

Which substitute was adopted.

On motion of Mr. Douthitt, a committee of three, consisting of Messrs. Douthitt, Hedges and Moores was appointed to consider ways and means of paying July interest, to report this evening.

Committee to report on proposition to construct Telegraph on the line of our road reports by Mr. Ellsworth that they thought it necessary to correspond with Western Union Telegraph Company as to several points in the proposal.

Which they were authorized to do.

Mr. Conser offered the following:

Resolved that the Directors of the O. C. R. R. Co. grant permission to Jacob Conser & Son to contract

for or build a bridge in connection with the R. R. bridge across the Santiam river, for a carriage way to be held and controlled by J. Conser & Son.

Which was adopted.

Adjourned until evening.

Wednesday evening June 9.

The Finance Committee reported on accounts which they had allowed as follows:

D. C. Ireland	6
J. Henry Brown	13.25
M. N. Chapman	8
Geo. E. Strong	50
W. F. Wheeler	8
John Hamilton	4

On motion of Mr. Ellsworth, the Board proceeded to ballot for a director to fill the vacancy caused by the resignation of Mr. Clarke when elected Secretary.

I. S. Smith was put in nomination and having received 14 votes that being the number of directors present, he was declared to be unanimously elected as such director. The Secretary was instructed to notify him of such election.

The committee to whom was referred the devising of ways and means to pay the interest due July 1, on four hundred thousand dollars (73) reported.

"That the Oregon Central Railroad Co. deliver to Messrs. A. J. Cooke & Co. their endorsed note at 90 days for the sum of \$14,000, payable in gold coin of the United States of America."

Mr. Ellsworth moved to amend, that the President and Secretary be instructed to draw a warrant of the Company on the Treasurer for the sum of fourteen thousand dollars, gold coin, and deliver the same to Messrs A. J. Cooke & Company in settlement of interest on said \$400,000 of bonds, being the amount due July 1, 1868.

Which amendment was adopted and the Resolution as amended was carried.

On motion of Mr. Chenoweth the following was unanimously adopted:

“Resolved, That A. J. Kane, & W. H. Andrews be and they are hereby authorized to canvass for subscriptions to stock and for donations at any points they may select in the Willamette Valley. They to receive for their services $2\frac{1}{2}$ per cent on all sums so obtained by them. Such percentage to be paid out of the moneys so obtained by them when the same is paid in. Such canvassers to pay their own expenses.”

Mr. Ellsworth offered the following:

Resolved, That the O. C. R. R. Co. hereby accepts any grant of land which may have been made, or may be extended to said company by Congress. And the officers of this company are hereby directed to file a duly authenticated copy of this resolution with the Secretary of the Interior, Washington, D. C.

Which resolution was adopted.

On motion it was ordered that the directors as canvassers shall receive as compensation for their services the sum of 5 per cent commission on all grants,

donations & subscriptions at the coin value, by them secured. The same to be in place of any per diem.

The Secretary reported that he had drawn up supplemental contract in duplicate as instructed, in the following manner.

Supplemental Contract.

Articles supplementary made this tenth (10th) day of June, A. D. 1868, between The Oregon Central Railroad Company of Salem, Oregon and A. J. Cooke & Co. the same being for the purpose of explaining and making clear the understanding of said parties in a certain contract heretofore made by original agreement made April 23rd, 1867, and articles supplementary thereto made November 27th, A. D. 1867, both being considered as one agreement between the parties hereto and for the purpose of further extending the provisions of said agreements. Wherefore, in consideration of the premises, and in order to make the said agreements, and in consideration of the sum of one dollar paid by each to the other, and the receipt whereof is hereby acknowledged, it is agreed between the parties hereto, that the provision in such original contract, providing as follows, "And that the party of the second part shall be entitled to the earnings of the road until such time as the same is accepted by the company." was intended to mean and it is hereby construed to mean, that the party of the second part is not entitled to receive the earnings of any part of such road after such road is accepted by the Company and paid for in bonds or money as per

stipulations in contract, and it is further agreed and understood that the party of the second part shall, at the completion of each ten miles of said road, surrender so much of the road so completed to the company for acceptance by the commissioners as before stated: Wherever in said Original Articles, and articles supplementary thereto, it is stipulated that the said company shall exhaust all their other means in payment on such contracts, it is hereby agreed that such clauses were intended to mean, and are hereby construed to mean, only such moneys as such Company may have on hand arising from donations or sale of stock, and shall not include any of the real estate or personal property of such company—ten per cent of the whole amount of moneys so collected by sale of stock, or by donations to be reserved by the company for expenses.

And it is in consideration of the foregoing premises and the further agreements of the parties hereto, this day made, and for the purpose of advancing the general interests of the enterprise, and for the mutual advantage of the parties hereto, hereby agreed, by and between the parties hereto, as supplemental to the contracts and agreements aforesaid (76) that in the event that the citizens along the line of the Trunk of road hereinafter referred to, shall raise by subscriptions and donations in coin in the manner provided for by the established rules of The Oregon Central Railroad Company, a sum equal to three thousand dollars, coin, per mile, for the whole distance of the

West Trunk hereinafter referred to. The said A. J. Cooke and Company do hereby agree to and with the Oregon Central Railroad Company to construct and complete a railroad to be known as the West Trunk of the Oregon Central Railroad Company, from a point within Linn County connecting with the East Trunk of the road as provided for in the contracts to which this is a supplement, at such point in Linn County as may be selected as the point of divergence by the Chief Engineer (Such East Trunk to extend southward through Linn County) and crossing the Willamette River at Corvallis and extending through Corvallis and Southward through Benton County, the same to connect with the East Trunk of such road at a point on the South, north of Township sixteen south, such point to be selected by the Chief Engineer of this Company, such road to be of the same quality and constructed in all respects of the same materials and on the same gauge and on the same plan of the road as provided for in the contract to which this is supplemental and in consideration thereof, the said A. J. Cook and Company shall receive for such West Trunk the sum of fifteen thousand dollars per mile and no more, the same to be paid, twelve thousand dollars per mile of the bonds of the Oregon Central Railroad Company, to be paid in the same manner and as the work progresses in the same proportion as to contract price, as is provided in the contract to which this is a supplemental. The remaining three thousand dollars per mile to be paid in cash upon

same terms as in original contract. And as soon as the citizens along the line of such West Trunk shall have raised for the same the sum equal to three thousand dollars per mile for the whole distance of the West Trunk of such road, from the points of divergence from the East Trunk running through Linn county as herein provided to the point of uniting on the south and report thereof to the Oregon Central Railroad Company, the said Contractors, A. J. Cooke & Co do hereby agree with within two weeks thereafter to commence the grading of such West Trunk and shall complete the whole of the grading thereof within six months after the commencement thereof, provided such subscriptions and donations shall be paid as such grading progresses, and provided further, that such West Trunk shall be completed within the same time after the commencement of the grading thereof though the East trunk is completed after the commencement of the grading of such East Trunk.

The President and Secretary were instructed and authorized to execute the aforesaid contract in the name of the company as of this date.

On motion the Board adjourned.

S. A. Clarke,
Secretary.

Directors Meeting July 14th, 1868.

Board met according to adjournment for its regular monthly meeting. There were present of the Directors, Mr. President, and Messrs. Moores, Cooke, Woods, Patton, Chenoweth, Henderson, Miller, Con-

ser, Ellsworth and Lovejoy.

Minutes of June meeting were read and approved.

Engineers report was read and referred to Committee on Finance.

The Secretary notified the board that J. S. Smith Esq. had verbally declined to qualify as a Director of the Company.

Committee on Telegraph appointed last month reported that they had corresponded with Wm. Mumford of the Western Union Telegraph Company and submitted the correspondence with the form of contract prepared to be entered into with them with this company which were read.

Mr. Ellsworth offered the following resolution which was adopted.

Resolved, That the officers of the Company are authorized to contract with the Western Union Telegraph Company as proposed, with such modifications as they can effect for the advantage of this company.

Mr. Ellsworth also offered the following which was adopted by a majority vote:

RESOLVED,

That it shall be deemed substantial compliance with existing contracts with A. J. Cook & Co., to locate (79) the line of road not exceeding three miles East of Salem, and on their being subscribed along that line at least \$3000 per mile the engineer is fully authorized to so locate the line instead of coming to Salem.

Mr. Ellsworth also offered the following which

was unanimously adopted.

RESOLVED,

That it shall be a substantial compliance with the existing contract with A. J. Cooke & Company to locate the line of the road in Linn County not exceeding four miles East from Albany, and upon there being subscribed at least \$3,000 per mile along that line the Engineer is fully authorized to so locate the line instead of going to Albany.

On motion of Mr. Chenoweth the Board proceeded to ballot for a Director to fill the existing vacancy.

Mr. Chenoweth nominated Green B. Smith, Esq., of Benton & Co. and a ballot being taken in accordance with the By-Laws of the Company Mr. Smith received eleven votes, being the number of directors then present, which result being obtained by a canvass made according to by-laws was announced by the President, and the Secretary was instructed to announce to Mr. G. B. Smith his election as such Director.

Mr. Ellsworth offered the following.

RESOLVED,

That the town or point on the line of the road, as finally located, whose citizens shall raise the largest sum in addition to the ordinary subscription to aid the road, to be at least ten thousand dollars, shall be selected as the location of the machine shops for the company. And subscription books for this purpose shall be kept open until the first day of October, 1868, which was laid on the table.

Board adjourned until evening.

Having reassembled the finance committee reported in favor of the following accounts as correct, recommending that the same be settled by warrants on the Treasury, to-wit:

S. A. Clarke, Secretary O. C. R. R. Co.,

1 quarter's salary to July 1\$ 450.00

J. H. Mitchell, attorney for Co.,

2 quarter's salary to July 1 2500.00

W. D. Carter,

Painting, etc., 12.00

J. K. Gill & Co.,

Stationery acct. 4.75

On motion the secretary was instructed to draw warrants on the Treasurer in favor of said persons for the amounts stated.

The resolution relative to machine shops was taken from the table and after considerable discussion thereon was again tabled.

A resolution of similar effect was presented by Mr. Lovejoy and was laid on the table.

Mr. Chenoweth moved that all action of the Board relative to salaries and commissions of the officers of the company and members of the Board be stricken out and rescinded.

Mr. Ellsworth moved to refer the resolution to the Committee on Finance with instructions to report at August meeting a suitable scale of prices.

Which motion was adopted.

On motion, the Secretary was instructed to file with Secretary of State and County Clerk of Marion County, statements, as required by law, of the num-

ber of directors of this company, less than a majority, constituting a quorum for the transaction of business.

On motion Board adjourned.

S. A. CLARKE,

Secretary.

STATE OF OREGON,

County of Marion—ss.

I, Green B. Smith, Director Elect of the Oregon Central Railroad Co. do solemnly swear that I will faithfully and honestly discharge the duties of the office to which I have been elected to the best of my ability, so help me God.

GREEN B. SMITH.

Sworn and Subscribed to before me this the 8th day of Sept., A. D., 1869.

Seal of S. A. Clarke

Notary Public,

Oregon.

S. A. CLARKE,

Notary Public.

Salem, August, 11, 1868.

At the regular monthly meeting of the Board, held this day at the Company's office, there were present Mr. President and Messrs. J. H. Moores, E. N. Cooke, T. McF. Patton, J. H. D. Henderson, S. Ellsworth, Jacob Conser, A. L. Lovejoy. The minutes of last meeting were read and approved. The order of business being taken up the committee on Finances reported through Mr. E. N. Cooke, Chairman, that having examined the reports of the Chief Engineer, the same were found to be correct, as to the months of

May and June.

The same committee also made report that the subject of salaries and compensation which was referred to them at last meeting having been under their consideration they recommended that no action be taken at this time but that the same be laid upon the table.

On motion this report was adopted.

Mr. Patton moved that a committee of three be appointed to secure and fit up an office for the use of the company, which motion was carried, and Messrs. Patton, Moores & Cooke were appointed such committee.

Mr. President submitted to the board his agreement made with Mr. Millivons of Lane County, relative to town sites at the junction of the Linn and Benton Trunks, which action was approved on motion of Mr. Patton & the President was instructed & authorized by said motion to act for the Company when such matters should arise.

On motion of Mr. Ellsworth the President was authorized for the purpose of raising means to settle outstanding accounts to collect and in money on subscription accounts or in failure thereof to negotiate a loan for that purpose not to exceed one thousand dollars.

In relating to difficulties existing as to securing right of way on the line of the road from persons living above Canimah on motion Mr. Hedges was requested and authorized to act for the company to secure the same by settlement, or by tender and suit, as

prescribed by law, if the same be necessary.

Mr. Henderson made suggestions relative to the projected road to connect with Central Pacific via Eugene at the Humbolt, advocated and on motion of Mr. Ellsworth the same was referred to a select committee of three, to communicate with our members of Congress and convey to them information that will bear upon the subject.

Messrs. Henderson, Ellsworth & Patton were appointed such committee, and on motion Mr. President was added as a member thereof.

On motion Board adjourned.

S. A. CLARKE,
Secretary.

Salem, Sept. 8th, 1868.

At the regular monthly meeting of the board this day held there were present Mr. I. R. Moores, President, Messrs. Loryea, Miller, Moores, Conser, Woods' Patton, Cooke, Chenoweth, Ellsworth, Henderson and Green B. Smith, heretofore elected a director, who having duly qualified, as required by law, as will be seen by his official oath, propedly certified, which is inscribed on page 82 of this book, appeared as a member of the Board of Directors.

Being called to order, the proceedings of last meeting were read and approved.

Mr. Loryea moved to appoint a committee whose duty should be to meet and receive Messrs. Brinck, Welsh and Winslow, who are expected soon to arrive in Oregon and examine the resources of our State, to extend proper courtesies to these gentlemen during

their stay with us.

The motion passed and Messrs. Loryea, Parrish and Chenoweth were appointed such committee.

Mr. Ellsworth moved the appointment of a committee to properly prepare and place before the Legislative assembly matters relating to the Oregon Central Railroad & the success of this enterprise, which motion passed and Messrs. I. R. Moores, J. F. Miller, & J. H. Mitchell, Atty. of the Co., were designated by the Board as such committee.

Board adjourned until tomorrow at 9 o'clock A. M.

Wednesday, Sept. 9

9 o'clock A. M.

Board met pursuant to adjournment present as of yesterday.

On motion Mr. Elliott was requested to act with the committee appointed to receive Mr. Brinck and others and accompany them in a tour through this valley.

On motion it was,

Resolved: That the Company accepts the liberal donation of land made to it for depot purposes in the City of Portland by the Oregon Iron Works & by Messrs. J. S. Smith, W. K. Smith and J. H. Hayden; also the liberal donation made for a like purpose in the City of Salem by the Willamette Woolen Manufacturing Company of that place; and we hereby express our appreciation for these substantial manifestations of confidence in our company and the liberal disposition to aid our enterprise.

On motion Mr. Mitchell was instructed to draw

up an agreement with the Peoples Transportation Company, the same to be in accordance with a diagram prepared & a statement submitted to the Board. Board adjourned sine die.

S. A. CLARKE,
Secretary.

Tuesday, Sept. 15, 1868.

At a meeting of the Board duly called by the order of the President there were present of the Directors, Mr. President, Messrs. Miller, Lovejoy, Loryea, Chenoweth, Hedges, Patton, Cooke, Douthitt, Ellsworth and Conser.

A resolution was offered concerning the transfer of the interest of A. J. Cooke & Co., Contractors to Messrs. Ben Holladay & Company and recognizing Ben Holladay & Co. as the successors of A. J. Cooke & Company, duly accepted by this corporation.

On Mr. Loryea's motion, the subject of said transfer and resolution in relation thereto was referred to a select committee composed of Messrs. Loryea, Ellsworth and Chenoweth.

Board adjourned until one o'clock.

Wednesday, Sept. 16, 1 o'clock P. M.

Board met according to adjournment, all present as before, but Mr. J. H. Moores.

Mr. Loryea, from select committee to who was referred the matter of the change of contracting firm, reported the following.

Your committee to whom was referred the resolution proposing to recognize Ben Holladay and Co., in the contract with the Oregon Central Railroad

Company, for the construction of the first 150 miles of this railroad & also the contract extending the same to the California line, would report that we have had the same under consideration and would recommend that upon the transfer in writing, signed by A. J. Cooke and Company to Ben Holladay & Co. of all their interests in such contract, and the acceptance of such transfer by Ben Holladay & Co. in writing by them signed, and the further agreement in writing by Holladay & Co. to be executed to this company, wherein they agree to assume all contracts and agreements entered into heretofore between A. J. Cooke & Co. and this corporation, relative to the construction of said road, and relative to the sale, transfer, and redemption of stock of this corporation, and upon such assignment, acceptance and contract being filed in the office of this company, that a resolution as follows be adopted by this company.

Proposed Resolution.

Whereas the firm of A. J. Cooke & Co., contractors for the construction of the first one hundred and fifty miles of railroad, have sold and transferred by an assignment in writing, filed in the office of this company, all their interest in the contract for the construction of such road to Ben Holladay & Co., and whereas:

Said Ben Holladay and Co. (said firm being composed of Ben Holladay, C. Temple Emmet & S. G. Elliott), have by writing and agreement with this Company, filed in the office of this company, accepted such transfer and have agreed with this company

to assume—and have assumed all the covenants and conditions of such contract to be performed by said A. J. Cooke & Co., and also all other (89) agreements and covenants heretofore entered into by said A. J. Cooke & Co. with the Oregon Central Railroad Company, relative to the sale, transfer, and redemption of stock and it further appearing to this Board, that said Ben Holladay & Co. are prepared and intend to prosecute the work without delay,

Therefore: Resolved:

That this company hereby recognize the said transfer from A. J. Cooke & Co. to the said firm of Ben Holladay & Co., and we accept the latter as the contractors under the existing contracts for the construction of the Railroad aforesaid.

A. M. LORYEA,
S. ELLSWORTH,
F. A. CHENOWETH,

J. H. Mitchell of Counsel for Corporation.

Which report on motion was adopted.

Mr. Chenoweth offered the following:

RESOLVED,

That we have full confidence in the financial ability and good faith of the said contracting firm of Ben Holladay & Co. and consider said firm entitled to the unreserved and entire confidence of this Board.

Which motion was unanimously adopted.

Whereupon the Board adjourned.

S. A. CLARKE,
Secretary.

Thursday evening, Oct. 13.

At a regular meeting of this date, there were present, Mr. President and Messrs. Hedges, G. B. Smith, Chenoweth, Conser, no quorum being in attendance, the Board adjourned until the next evening at 7 o'clock.

Wednesday evening, Oct. 14.

Board met pursuant to adjournment, present Mr. President, & Messrs. Miller, Moores, Hedges, Conser, Douthitt, Smith, Chenoweth. Mr. Mitchell, the counsel for the Co. being also present. The Secretary presented the formal written resignation of Director Hamilton Boyd, which on motion was accepted, and Mr. Boyd's official connection with the company as a Director thus declared terminated.

Also the resignation in similar form from Phillip Wasserman was presented and on motion accepted, and Mr. Wasserman's official connection with the company as a director thus declared terminated.

Also a written communication from A. M. Loryea was presented, resigning his position as a Director of the Company and as Vice President, which was on motion unanimously accepted and his official connection with the company declared terminated.

The Secretary presented a written communication from Henry McKay, Esq., stating that A. M. Loryea had promised him as well as Messrs. Brinck and Welsh, that the company would pay the expenses of their trip hither.

On motion the matter was referred to a select committee of three, Messrs. Conser, Hedges and Mitchell.

The following accounts were presented and referred to Finance Committee.

N. O. Parrish & Co.	\$ 23.13
J. H. Mitchell	1250.00

Mr. J. H. Moores inquired what the course to be pursued relative to parties claiming damages of the company for passing through their lands. Case of Mr. Brown was cited as an example.

A resolution, prepared by the attorney for the Co. J. H. Mitchell, Esq., was read relating to rights of way and referred to a special committee of three, consisting of Messrs. Chenoweth, Miller & Douthitt.

Mr. Chenoweth moved that no action be had to fill the vacancies existing the Board of Directors, which motion carried. Mr. Conser moved that the Board immediately proceed to elect a Vice President. Which motion carried.

Messrs. Douthitt and Chenoweth being appointed tellers, the vote was taken by ballot & duly canvassed with the following result.

Mr. G. B. Smith received 4 votes.

Mr. A. F. Hedges received 2 votes.

Mr. I. H. Douthitt received 1 vote.

Mr. Chenoweth received 1 vote.

Whole number of votes cast, eight.

Necessary to a choice, five.

The second ballot was duly taken and canvassed with the following result:

Mr. G. B. Smith received five votes.

Mr. A. F. Hedges received two votes.

Mr. J. F. Miller received one vote.

Whereupon G. B. Smith, having received a majority of the votes cast was (94) declared duly elected the Vice President of the Oregon Central Railroad Company.

Whereupon the Board adjourned until Thursday evening, Oct. 15, at 7 o'clock.

Thursday evening, Oct. 15, 1868.

The Board met pursuant to adjournment.

There were present Mr. President, Messrs. Moores, Chenoweth, Hedges, Miller, Douthitt, Conser, Smith, and Lovejoy. Committee to whom was referred the communication made to the Board by Mr. Henry McKay made the following report:

Whereas a communication has been received from Henry McKay of New York City, stating in substance that as one of the conditions of his coming to Oregon, Dr. Loryea distinctly stated and promised that his expenses would be defrayed by this company, such communication also stating that Messrs. Brinck and Welsh also concurred in such communication.

And whereas, Dr. Loryea had no authority from this company, either express or implied, to make any such promise for or in behalf of this company, and while we exceedingly regret that any such unauthorized promise should have been made: Wherefore; The Secretary of this Board is instructed to respectfully communicate to Messrs. McKay and Brinck and Welsh, that such promise on the part of Dr. Loryea was wholly without authority, either express or implied; and that without any knowledge or intimation from Dr. Loryea, either before or since his return to

Oregon, that such promise had been made, and therefore this Company could not in justice to itself carry out any such unauthorized arrangement.

JACOB CONSER,

Chairman.

Which report was unanimously adopted.

The Committee to whom was referred the subject of procuring rights of way and the necessary steps to take therefor, made the following report.

Whereas, It being the deliberate judgment of this Board that the owners of land along the route of the Rail Road now being constructed, instead of being injured by such road, will, as an almost universal rule, be benefited thereby:

Wherefore,

Resolved, That this company will, before proceeding to take possession of any person's land for the purpose of grading, use all honorable efforts to secure a Deed of right of way therefor as a gift in consideration of the benefits to be derived by such owners in the construction of the road, and in any case any such owner shall decline to give such deed, then a map of the survey of such road showing the amount of lands and location of said owner, required by the company, shall be furnished to the attorney for the corporation, and he shall proceed at once to have such lands condemned, to the use of the Company, by action in Court as provided by law, unless such attorney shall otherwise desire, in which case his directions in the premises shall be followed by the Company, and in case of a failure upon the part of any of the agents

of this Company to secure deeds as above, he shall proceed at once to have a map made giving the exact location of the lands sought to be condemned, giving course, distances, curvatures and shall report the same to the next regular meeting of this Board, when the same shall be submitted to the attorney for his decision provided it shall be the duty of the Chief Engineer to furnish all such maps and diagrams, within twenty days after demand made by any authorized agent of the Company.

F. A. CHENOWETH, Chmn.

Which report was unanimously adopted and on motion the Secretary was instructed to furnish members of the Board, and the Chief Engineer with a copy of the resolution. Account of B. L. Norden, Co. Clerk of Multnomah County, being bills of costs in action State of Oregon ex rel, I. R. Moores vs. J. Gaston et al, for \$57.25 was referred to Finance Committee. On motion Board adjourned until Friday evening.

Friday evening, Oct. 16, 1868.

Board met pursuant to adjournment present as on Thursday and there being no important business before it adjourned sine die.

S. A. CLARKE,
Secretary, Etc.

Wednesday, Nov. 25, 1868.

There having, (by common consent), been no regular meeting this month, a called meeting was held in Portland this date, there being present Mr. President, & Messrs. Moores, Chenoweth, Patton, Conser, Henderson, Ellsworth, Woods, Lovejoy, Parrish.

Mr. Mitchell, Atty. for the corporation, read a statement, comprising a history of all matters connected with the company prepared by him.

On motion of Mr. Ellsworth the foregoing statement was unanimously adopted by the Board, and the President and Secretary were instructed to sign the same officially and attach the seal of the company thereto.

The Secretary read to the Board a communication from Henry McKay of New York, in relation to the same subject as his former communication, on the promise of Dr. Loryea that expenses should be paid, from the East, by this Company.

On motion of Mr. Henderson, the Secretary was instructed to write respectfully, informing Mr. McKay of the circumstances of Dr. Loryea's powers and his unauthorized promises.

On motion of Mr. Ellsworth, duly seconded it was ordered by the Board, that the sum of One Thousand Dollars be set apart for the purpose of paying five hundred dollars each to Messrs. J. H. D. Henderson and Geo. L. Woods, towards defraying their expenses to the City of Washington, on business of the corporation, should they proceed thither as contemplated.

Whereas, it is deemed expedient that, for the furtherance of the interests of the company several of its members shall immediately go East & visit Congress and the departments: and for such purpose funds are needed.

On motion of Mr. Chenoweth it was ordered as follows:

That the president is authorized to sign in his official capacity, a note of hand payable four months after date for \$5,300.00, from the proceeds of which note, when negotiated, the said sum, of one thousand dollars shall be appropriated towards defraying the travelling expenses of Gov. Woods & Mr. Henderson, and remainder to pay the salary of J. H. Mitchell, Esp. the attorney for the company.

On motion of Mr. Lovejoy the Secretary was ordered to draw his warrant on the Treasurer for the entire amount of Salary due Mr. Mitchell until January 1, 1869. \$125.

Mr. Parrish offered the following preamble and resolution, which were unanimously adopted.

Whereas S. G. Elliott, acting for the contracting firm of A. J. Cooke & Company, bought four locomotives in the name of the Oregon Central Railroad Company and has, since the arrival of said locomotives in San Francisco, California, sold the same to the Central Pacific Railroad Co., now therefore,

Resolved that the action of the said S. G. Elliott be approved, provided the new firm of Ben Holladay & Co. shall replace the four locomotives so that no damage of any kind shall occur to the Oregon Central Railroad Company.

On motion of Mr. Conser it was

Resolved,

That the Secretary be instructed to issue to Ben Holladay & Co. one million of the common stock of the company & take the receipt of Ben Holladay & Co. therefor, as an advanced payment, equivalent to

one hundred thousand dollars coin on the contract to pay three thousand dollars per mile on the construction of the road, which said transfer was immediately made in the presence of the Board & the Secretary advised the Board that the said receipt was duly given therefor.

Mr. Elliott, on the part of Ben Holladay & Co., presented the certificate of said firm, releasing the company from the contract, relative to payment of nine tenths of receipts from donations and subscriptions to the contractors, to the extent of five thousand dollars, as specified in said certificate, to wit: to pay salary of J. H. Mitchell \$3000. To pay expenses of other members of the company to Washington, one thousand dollars, to pay salary of Secretary, \$1000.00.

On motion of Mr. Chenoweth the following preamble and resolution was adopted.

Whereas the Legislature of the State of Oregon, at its late session in October, 1868, by joint resolution designated "The Oregon Central Railroad Company," of Salem, Oregon, incorporated April 22, 1867, under the laws of Oregon, as the company to take, manage, & control the land grant given in aid of the construction of a railroad and telegraph line from Portland Oregon, Southeasterly through the Willamette, Umpqua, & Rogue River Valleys, by Act of Congress of date July 25th., 1866.

And whereas such Legislature failed to designate any company until after the expiration of one year from the date of the passage of said act of Congress.

Therefore, Resolved that this Company—The Ore-

gon Central Railroad Company of Salem, Oregon,—organized April 22, 1867, does hereby accept such grants and does assent thereto, upon the terms and conditions specified in said act of Congress of July 25th, 1866, granting aid as aforesaid.

And Resolved Further,

That the Secretary of the Company be and he is hereby instructed to prepare a true and certified copy of this preamble and resolution, together with a certified copy of such joint resolution, being known as Senate Joint Resolution No. 16, under the seal of this company, & forward the same forthwith to the office of the Secretary of the Interior, and have the same filed in such office as the assent of this company to the grant aforesaid.

The following preamble and Resolution, being offered by Mr. Ellsworth, moved by him and duly seconded, was unanimously adopted by the Board:

Whereas,

J. H. Mitchell, the attorney of this corporation, has proposed without charge or expense to this company to go East and represent this company before congress and the Departments at Washington City.

Wherefore, Resolved,

That J. H. Mitchell be, and is hereby authorized and empowered to represent this corporation & its interests as agent and attorney thereof, before the Congress of the United States and the Departments at Washington, to the end that all necessary legislation by congress and action by such Departments may be had in order to secure and promote its interests.

Whereupon the Board adjourned.

S. A. CLARKE,
Secretary.

Directors' Meeting.

Tuesday, January 12, 1868.

At a regular meeting of the Board this day held at the company's office in Salem, there were present, Mr. President, Messrs. Moores, Conser, Patton, Douthitt, Chenoweth, Cooke, Lovejoy, Hedges.

The Board was called to order by the President at 3 P. M.

The following accounts were presented and referred to the Finance Committee.

Myers & Riggs	\$ 6.25
C. M. Parmenter	207.00

Mr. Chenoweth proposed the following sections as amendments and additions to the By-Laws of the company, which amendments were received to be acted on at a future meeting as required by the Laws of the Corporation as follows:

"By-Laws proposed at the regular meeting held at Salem on the 12th day of January, A. D., 1869.

Sec. 22. Sec. 17 on page 9th of Journal is hereby repealed, and in lieu thereof, the following is enacted, to wit: No stock shall issue, except by order of the Board of Directors, and case of the loss, or destruction of any certificate of stock, upon due proof of such loss, and a sufficient bond of indemnity, the company may issue a duplicate thereof.

Sec. 23,

That the Stock subscribed by the chairman of the

meeting of corporators of this company on the 22nd day of April, 1867, to the amount of seventy thousand shares, or such amount thereof as is not disposed of at the adoption of this By-Law, shall be issued to said Oregon Central Railroad Company in certificates of equal amounts as near as can be, and one of each certificates be held by each of the following named gentlemen, in trust for said company, to wit:

(Here insert names of Trustees).

And the said trustees, are instructed and authorized to represent said stock at all meetings of stockholders of the Oregon Central Railroad Company, and to vote the same, according to their judgment, as may be for the best interest of the Company.

Sec. 24.

The above named trustees shall be entitled to cast one vote for each share of stock so held by them, at any and all elections of directors and officers of said company: and in case of the absence of any one of said trustees, the absentee may by written authority authorize any other one of said Trustees to cast the vote and represent the shares so held by him: and in case of a failure so to appoint a proxy, the Board of Directors may authorize any Director or Directors to represent said stock and vote the same in such manner as such absentee in their judgment would and ought to vote it if present.

Sec. 25.

It shall be the duty of the Secretary to arrange the names of the said Trustees in alphabetical order and charge each one with the number of shares so held

by him; and as part of the stock is sold or otherwise disposed of, he shall take from each in regular order and in equal amounts, crediting said Trustee and charging to purchaser therewith & shall transfer the **same** on the books accordingly, and for the purpose the certificate so held by said Trustee shall be **taken** up and cancelled when the amount or number of shares held by him is reduced by the sale or other disposition of the stock, and a new certificate shall be issued to him for the number of the shares remaining in his custody.

Sec. 26.

Each stockholder shall be entitled to cast one vote for each share held or owned by him, or any one who shall have a written authority to act as trustee or as agent or proxy, for any absent stock holder, may vote according to such written authority by filing such authority with the Secretary.

Mr. Chenoweth offered the following preamble and resolution:

“Whereas,

At a meeting of the Board of Oregon Central Railroad Company at Salem, Oregon, on the 14th day of July, 1868, a resolution was adopted as follows:

“Resolved,

That it shall be a substantial compliance with existing contracts with A. J. Cooke & Co. to locate the line of road not exceeding three miles east of Salem, and on their being subscribed along that line at least \$3000 (106) per mile, the Engineer is fully authorized to so locate the line instead of coming to Salem.

And Whereas:

It does not appear that \$3000 per mile has been subscribed on the proposed line,

And Whereas:

Since that time the citizens of Salem have since that time subscribed with some degree of liberality to said road on condition that said road is run to Salem, therefore, be it

Resolved, By the Board of Directors of the O. C. R. R. Co., that said resolution be, and the same is hereby rescinded, & declared null and void.

After debate the foregoing Resolution was unanimously adopted. Mr. Chenoweth offered a similar resolution relative to the location of the road east of Albany, which resolution, on motion of Mr. Chenoweth, was laid over, to be considered and acted on at the regular meeting of the Board in February.

The Finance Committee reported in favor of paying the following accounts, referred to them at different times.

A. L. Stimson,

in currency \$ 70.

Ben Norden,

Clerk Multnomah Co. 57.25

In Currency,

Scott & Co., Coin 2.

Geo. W. Pollum, Coin 7.

C. M. Parmenter, Coin 207.

Myers & Riggs, Coin 6.25

On motion, the same were ordered to be paid, and the Secretary of the Co. directed to draw warrants on

the Treasurer for the respective amounts.

On motion, the Board adjourned until this evening at 7 o'clock.

7 o'clock P. M.

The Board, present as before, and also Mr. Parrish appeared. No especial business demanding the attention of Board, it adjourned sine die.

S. A. CLARKE,

Secretary.

Tuesday, February 9, 1869.

It being the day for regular monthly meeting of Board of Directors there were present Mr. President, and Messrs. J. H. Moores, Chenoweth, Smith, Parrish, and Conser, which number not constituting a quorum for business an adjournment was had until tomorrow morning at 9 o'clock.

Wednesday, 9 o'clock.

Present as of yesterday and also Mr. Patton, so constituting a quorum, the Board was called to order by the President.

The minutes of January meeting were read and approved.

Mr. Chenoweth offered the following, whereas,

At the regular meeting of the Board of Directors of this company, held in July, 1868, a resolution was passed allowing the chief engineer, on certain condition to locate the road not to exceed four (4) miles east of the City of Albany:

And Whereas,

Since then said City of Albany has raised a considerable sum of money and lands for the encouragement

of the road, on condition that said road should run within one mile of Albany, and establish the depot at said point within one mile of the Court House of said City;

Now, therefore,

Be it resolved,

That in case the people of Albany shall subscribe and secure in money and lands to said road, the sum or value of thirty thousand dollars: then and in that case, said resolution passed in July, 1868, as aforesaid, shall be rescinded and declared void which on motion was adopted.

Mr. Chenoweth moved the adoption of the Resolution offered by him at the regular meeting in January, which offered amendments & additional sections to the By-Laws of the Company.

After consideration and discussion of the motion, Mr. Chenoweth withdrew the same, and at his suggestion by general consent, the action on this subject was passed over for the next regular meeting.

Mr. Conser offered the following, as an amendment to the By-Laws of the Company, being similar in character and intended to be amendatory to the amendments now pending.

Amendments proposed by Mr. Conser:

Resolved,

That the By-Laws of this company be amended by the addition of two Sections, as follows:

Sec. The Seventy Thousand shares of the Capital Stock of this corporation subscribed by order of the meeting of incorporators April 22, 1867, by Geo.

L. Woods, Chairman of said meeting, and held by virtue thereof, or so much of said stock as shall at any time remain unsold, shall be jointly held & represented at any stockholders' meeting by one or more trustees, to be elected by the Board of Directors.

Sec. At the time of making up the list of stockholders entitled to vote at (110) any regular meeting of stockholders the Secretary shall ascertain the number of shares of said stock remaining unsold, and shall make and deliver to such trustee or trustees, a certificate duly signed by the President and Secretary, sealed with the corporate seal, and stamped with sufficient U. S. revenue stamp, setting forth the number of shares to be so held, represented and voted on, and authorizing said Trustee or Trustees to so represent the same.

And said trust shall be exercised according to the directions of the Board of Directors, such they take action thereon and give such instructions.

Which resolution was received and on motion of Mr. Chenoweth was ordered to be spread on the Journal.

On motion of Mr. Smith the President was authorized to see what arrangements can be made for the location of a station and depot at or near Waconda, and to report thereon at the next meeting.

On motion of Mr. Moores, it was

Resolved,

That the provision made by the Board April 17, 1868, requiring that a salary fund should be set apart,

is hereby repealed, and salaries shall be paid from the General Fund.

S. A. CLARKE,
Secretary.

Tuesday, March 9, 1869.

At the regular meeting of the Board of Directors of the O. C. R. R. Co. this day held in Salem, there were present Mr. President, & Messrs. Cooke, Miller, Conser, Hedges, Douthitt, Patton, Moores, Parrish, Ellsworth and Wood.

The minutes of last meeting were read and approved.

The President read contract made with owners of land near Waconda for the location of a depot, which contract, on motion of Mr. Ellsworth, was approved by the Board.

On motion of Mr. Douthitt the President was authorized to take such steps as he may approve to have the Waconda townsite surveyed and laid off in Blocks and Lots.

Mr. Ellsworth moved that when the Board adjourn, it do so to meet at Salem on Monday, April 5th, ensuing, which motion was carried.

The Amendments to the By Laws heretofore presented, were considered, and on motion were laid over for further action.

On motion the Board adjourned to the 5th of April ensuing.

S. A. CLARKE,
Secretary.
Monday, April 5th, 1869.

The Board met pursuant to adjournment, present Messrs. Moores, Cooke, Douthitt, Conser, Hedges, Parrish, Ellsworth, Lovejoy, Chenoweth, Patton and Mr. President.

On motion of Mr. Chenoweth the By Laws were amended as applied for by him at the meeting in January by the following added section:

“Sec. 22. Section 17 on page 9 of Journal is hereby repealed, and in lieu thereof the following is enacted, to wit:

“No stock shall issue, except by order of the Board of Directors and in case of the loss or destruction of any certificate of stock, upon due proof of such loss, and a sufficient Bond of Indemnity, the Company may issue a duplicate thereof.”

The foregoing amendment to the By Laws was unanimously adopted.

The following By-Law, which had been submitted by Mr. Chenoweth at the January meeting was submitted to a final vote on motion of Mr. Chenoweth.

“Sec. 23. Each stockholder shall be entitled to cast one vote for each share held or owned by him and any one who shall have a written authority to act as agent or proxy for absent stockholder or for the company, may vote according to such written authority by filing the same with the Secretary, which being put to vote was unanimously adopted.

The By Law relating to the representation of the stock owned by the corporation, or held for it by Geo. L. Woods, Chairman of the meeting of Incorporators, being under consideration.

Mr. Ellsworth moved to refer to the coming meeting of stockholders, which motion was lost.

Mr. Douthitt moved that the same be referred to Messrs. Ellsworth, Chenoweth & Lovejoy, which motion carried, & they were instructed to report tomorrow morning at 11 o'clock.

Messrs. Douthitt, Conser and Parrish were appointed a Committee to examine accounts of Directors and report on the same tomorrow morning.

Whereupon the Board adjourned until tomorrow morning at 11 o'clock.

Tuesday, April 6th, 1869.

The Board met pursuant to adjournment present as of yesterday, and also Geo. Woods.

Ellsworth offered the following resolution as to representation of the stock held by virtue of Subscription, April 22, 1869, of Geo. L. Woods, Chmn. of Incorporators' meeting.

Resolved that until otherwise provided for, the stock subscribed for this corporation by Geo. L. Woods, or so much thereof as is not disposed of, be represented and voted by Geo. L. Woods, for the benefit of the corporation at the annual meeting (114) of stockholders for 1869, substantially in the manner it was done by the Secretary of the Board at the last annual meeting.

Which resolution unanimously passed.

Mr. Conser from the committee to audit the accounts of Directors made the following report:

Your committee appointed to audit and report amounts due to members of the Board for compensa-

tion, report that we have had the subject under consideration and recommend that they be allowed, as follows, for services as Directors for the fiscal year 1868-9, to-wit:

T. Mc F. Patton	\$ 216
J. H. Moores, as per bill	200
A. L. Lovejoy, as per bill	904
A. F. Hedges, as per bill	800
I. H. Douthitt, as per bill	1207
F. A. Chenoweth, as per bill	800
I. Conser, as per bill	591.75
S. B. Parrish, as per bill	552
I. H. D. Henderson, as per bill	300
S. Ellsworth, as per bill	400
G. L. Woods, as per bill	96

Several members of the Board have not handed in a bill so we have no means of knowing what they should be allowed.

I. CONSER,
Chairman.

On motion the report was adopted, and warrants ordered to issue for the sums due the said several named persons.

Mr. Douthitt moved that warrants be drawn for salaries due the officers for the past year, which motion was carried.

The Treasurer made his report, which was adopted, and ordered to be placed on file.

Committee on revision of By Laws made a report, which, in view of the resolution heretofore adopted, instructing Geo. L. Woods to cast the vote on the

stock held by the company, as subscribed by him for the corporators April 22, 1867, was laid on the table on motion of Mr. Ellsworth.

The following accounts were presented and warrants ordered to issue for the several amounts.

D. C. Ireland,

Paid by S. A. Clarke for advertising stock-holders' meeting	\$ 3.50
---	---------

A. L. Stinson,

Printing bill (bal.)	303.62
----------------------------	--------

F. A. Chenoweth,

For printing done for Company	15
-------------------------------------	----

State Journal,

For printing done	5
-------------------------	---

Mr. Ellsworth offered the following:

Resolved that for the ensuing fiscal year the affairs of the company shall be managed by an executive committee to consist of the President and four Directors to be appointed for the purpose. Said committee shall meet as often as once and oftener if necessary.

And the Board of Directors shall hold its regular meetings once in six months, although special meetings may be held at any time on call of the President, said committee shall keep a record of its doings and report the same to the Board of Directors for its approval or rejection, which passed unanimously.

The matter of the Salary of the Secretary for the year ending April 1, 1868, was under consideration and was referred to the Board of Directors of that

year. Whereupon the Board adjourned.

S. A. CLARKE,

Secretary.

In pursuance with notice, the stockholders of the Oregon Central Railroad Company met at their office in Salem on the 6th day of April, A. D. 1868, under the direction of the President and W. R. Dunbar, one of the stockholders & proceeded to the election of Directors for the ensuing year, with the following result.

The following named persons received the number of votes set opposite to their respective names:

I. R. Moores received	50253
J. H. Moores received	50817
F. A. Chenoweth received	50842
S. B. Parrish received	50253
A. F. Hedges received	50253
A. H. Lovejoy received	50253
J. H. Douthitt received	50842
E. N. Cooke received	50253
Geo. L. Woods received	50842
S. Ellsworth received	50253
A. Bush received	50253
G. B. Smith received	50842
J. H. D. Henderson received	50842
I. C. Hawthorne received	50842
G. W. Weiller received	46248
S. M. Smith received	50842
S. F. Chadwick received	50842
J. F. Miller received	50842
J. H. Foster received	50842

Jacob Conser received	50253
T. Mc F. Patton received	51442
J. E. Ross received	50817
Geo. A. Edes received	50817

and said persons having received a majority of votes of the stock were declared duly elected. I hereby certify that I acted as inspector of said election and that said persons were duly elected Directors thereat.

I. R. MOORES,
President.

STATE OF OREGON,

County of Marion—ss.

We, Samuel M. Smith, and Geo. W. Weidler, being severally sworn depose and say that we will each faithfully and honestly discharge the duties of Directors of the Oregon Central Railroad Company to the best of our ability. So help us God.

Internal

Revenue

Stamp

SAM'L M. SMITH,
GEO. W. WEIDLER,
V. H. D. HENDERSON.

Subscribed and sworn to before me this the 11th day of May, A. D., 1869.

Internal Notary

Revenue Public

Stamp Seal

S. A. CLARKE,
Notary Public for Oregon.

Subscribed and sworn to before me by J. H. D.
Henderson this the 9th day of June, A. D., 1869.

(Notary Public Paster) S. A. CLARKE,

Internal

Revenue

Stamp

Notary Public for Oregon.

The Directors elected, who were present, appeared
and qualified by taking this oath as follows:

STATE OF OREGON,

County of Marion—ss.

We, F. A. Chenoweth, S. Ellsworth, J. R. Moores,
J. H. Moores, S. B. Parrish, A. F. Hedges, A. L. Love-
joy, J. H. Douthitt, E. W. Cooke, G. L. Woods, A.
Bush, J. C. Hawthorne, J. H. Foster, Jacob Conser, T.
Mc F. Patton, Geo. A. Edes, being severally sworn,
do severally depose and say that we will each faithful-
ly and honestly discharge the duties of Director of the
Oregon Central Railroad Company, so help me God.

F. A. CHENOWETH,

S. ELLSWORTH,

I. R. MOORES,

E. N. COOKE,

T. McF. PATTON,

I. H. FOSTER,

A. L. LOVEJOY,

A. F. HEDGES,

GEO. A. EDES,

A. BURK,

J. H. DOUTHITT,

J. C. HAWTHORNE,

L. B. PARRISH,
JACOB CONSER,
GEO. L. WOODS,
J. H. MOORES.

Subscribed and sworn to before me this 6th day of
April, A. D., 1869.

[Notarial Seal.]

S. A. CLARKE,

Notary Public for Oregon.

The annual meeting of the stockholders of the Oregon Central Railroad Company was held according to publication duly made in the Oregon City Enterprise weekly newspaper, at 2 o'clock P. M. April 6th, 1869, being the legal day for said meeting the meeting was called to order by I. R. Moores, President. There were present George E. Cole, representing 4000 shares as proxy for Ben Holladay & Co., I. H. Moores representing 589 shares.

I. R. Moores representing 589 shares.

E. N. Cooke representing 589 shares.

T. McF. Patton representing 589 shares.

F. A. Chenoweth representing 589 shares.

J. H. Douthitt representing 589 shares.

Jacob Conser representing 589 shares.

S. A. Clark representing 589 shares.

S. Ellsworth representing 589 shares.

A. F. Hedges representing 589 shares.

S. B. Parrish representing 589 shares.

A. L. Lovejoy representing 589 shares.

W. R. Dunbar representing 5 shares.

Geo. L. Woods representing 589 shares.

and authorized to cast the Company vote for 39,769

votes representing more than a majority of the stock of the corporation.

The meeting proceeding to ballot for 20 Directors as provided in the By Laws with the following result: A. F. Hedges and W. R. Dunbar being duly appointed tellers for the occasion.

The vote being duly counted and canvassed resulted as follows:

I. R. Moores received 50253 votes.

F. A. Chenoweth received 50842 votes.

S. B. Parrish received 50253 votes.

A. F. Hedges received 50253 votes.

A. L. Lovejoy received 50253 votes.

J. H. Douthitt received 50842 votes.

E. N. Cooke received 50253 votes.

Geo L. Woods received 50842 votes.

S. Ellsworth received 50253 votes.

A. Bush received 50253 votes.

G. B. Smith received 50842 votes.

J. H. D. Henderson received 50842 votes.

J. C. Hawthorne received 50842 votes.

G. W. Weidler received 46248 votes.

S. M. Smith received 50842 votes.

S. F. Chadwick received 50842 votes.

J. F. Miller received 50842 votes.

J. H. Foster received 50842 votes.

Jacob Conser received 50253 votes.

T. McF. Patton received 50442 votes.

These gentlemen having received a majority of the votes of the corporation were declared duly elected directors thereof.

It was moved and seconded that the By-Laws of the company be so amended that the number of the Directors be increased to twenty-three as follows:

Resolved that there be elected at this meeting three additional directors for the ensuing year, in the manner provided in Sec. 2 of the By-Laws as amended, making 23 in all, which motion carried unanimously.

The meeting then proceeded to ballot for three Directors, the same tellers officiating, when the result was as follows:

J. H. Moores received 50817 votes.

J. E. Ross received 50817 votes.

Geo. A. Edes received 50817 votes.

and were declared elected directors of the Company for the ensuing year.

Mr. Ellsworth offered the following amendment to the By-Laws of the corporation, which upon a vote taken were unanimously adopted.

(Amendment to By-Laws.)

Sec. 24.

The 70,000 shares of the Capital Stock of this corporation subscribed at first meeting April 22nd, 1869, by Geo. L. Woods, Chairman of said meeting and held by this corporation by virtue thereof, or so much of said stock as shall from time to time remain undisposed of, shall be jointly held and represented for the use and benefit of this corporation at any stockholders' meeting, by three trustees who shall be chosen by the Board of Directors, and hold their office during the pleasure of said Board.

Sec. 25.

At the time of making up the list of stockholders entitled to vote at any regular meeting of stockholders, the number of shares of said stock remaining unsold shall be ascertained by the Secretary, and he shall make and deliver to such trustees a certificate duly signed by the President & Secretary and stamped with sufficient U. S. Revenue Stamps, setting forth therein the number of shares to be so held, voted and represented on, and authorizing said trustees to so represent the same. And said trust shall be exercised according to the directions of the Board of Directors should they take action thereon and give such instructions. Whereupon the meeting adjourned sine die.

S. A. CLARKE,

Secretary.

Tuesday evening, April 6th, 1869.

The Directors elected at the meeting of stockholders of The Oregon Central Railroad Company, this day held, having qualified according to law as recorded on page 125 of this Journal, met afterwards at the offices of the company for the election of officers of the company for the ensuing year. There were present Messrs. J. H. Moores, E. N. Cooke, F. A. Chenoweth, I. Conser, J. H. Foster, T. McF. Patton, Asabel Bush, Geo. L. Woods, E. B. Parrish, A. L. Lovejoy, J. C. Henderson, Geo. A. Edes, A. F. Hedges, and I. R. Moores.

The meeting was called to order by the President of the Company, I. R. Moores, and immediately proceeded to ballot for officers according to law. Messrs.

Chenoweth and Parrish being appointed Tellers for the occasion.

A vote being taken for President, Mr. I. R. Moores received thirteen (13) ballots, and Mr. Woods one (1) ballot.

Whereupon the Secretary announced that Mr. Moores was elected President of the Company for the ensuing year.

A vote being taken for vice president, Mr. Green B. Smith received thirteen (13) ballots and Mr. Douthitt one vote, and the President announced that Mr. Smith was elected Vice President.

A ballot being taken for Treasurer Mr. E. N. Cooke received eight votes,

“Asabel Bush received four votes.

“Geo. L. Woods received one vote.

“I. H. Moores received one vote.

whereupon the President announced that Mr. Cooke having received a majority of all the votes cast was duly elected Treasurer of the Company.

The election of a Secretary being next in order, Mr. Clarke, the present Secretary, announced that he would not be a candidate for re-election.

The vote being taken

George E. Cole received eleven (11) votes.

Mr. Clarke received one vote.

“Edes received two votes and

“I. H. Moores received one vote.

whereupon the President announced that Mr. Cole, having received a majority of all the votes cast was elected secretary.

The President announced the appointment of the following Committees:

Executive Committee.

Messrs. Bush, Weidler, Hawthorne, S. M. Smith.

Finance Committee.

Messrs. Patton, Edes, Chenoweth.

Committee of Ways and Means.

Messrs. Ellsworth, Douthitt and Hedges.

On motion of Mr. Edes, Mr. Mitchell was unanimously reappointed the attorney for the corporation.

Mr. Cooke moved that the matter of salaries be referred to a special committee of five, which motion passed.

The President announced Messrs. Edes, Chenoweth, Bush, Douthitt, and Conser as such committee. The committee, on motion, were instructed to retire for consultation and report immediately. Their report, when received, was as follows:

“We, your committee, heretofore appointed to estimate and determine as to salaries to be allowed to the officers of the O. C. R. R. Co., beg leave to report, that the salary of the

President shall be	\$2500
Attorney shall be	2000
Treasurer shall be	500
Secretary shall be	1000

The compensation of the Executive Committee and Directors, when on actual duty, shall be Six Dollars per day,—officers provided for by salary shall receive no compensation as per diem, for duty as executive committee or directors.

GEORGE A. EDES,
Chairman.

After a large numbers of motions and counter motions, to amend portions and to strike out portions of the report, the report being amended, and then as amended being voted down, several motions to reconsider being fluently passed, the whole being accompanied by (134) a spicy and animated debate, distinguished by good humor and an intense leading toward economy, the report of the committee was finally adopted without alteration or amendment.

On motion of Mr. Douthitt, it was ordered that the semi-annual meeting of the Board shall be held on the second Tuesday of October, 1869. Whereupon the Board adjourned.

S. A. CLARKE,
Secretary.

A special meeting of the Oregon Central Railroad Company was held in Salem Tuesday, June 8th, 1869, a personal notice having been given to the several directors, there were present, Mr. President, Messrs. J. H. Moores, E. N. Cooke, J. H. D. Henderson, Jacob Conser, S. Ellsworth, T. Mc F. Patton, J. H. Foster.

On motion the minutes of the executive committee held May 11th, 1869 were read as follows, to wit:—

“The Executive committee of the O. C. R. R. Co. met at Salem, May 11th at 10 o'clock A. M. Present J. R. Hoores, President; A. Bush, S. M. Smith, and Geo. W. Weidler, at which the following proceedings were had.

The Bond of Geo. E. Cole for the faithful perform-

ance as secretary of the O. C. R. R. Co. was read and approved.

The bill of William Anderson for rent for office and other rooms for 8 months at \$14.00 per month, \$112.00, was allowed and order made instructing the secretary to draw warrant on the Treasurer therefor. Also bill of B. Strang & Co., for stove, etc., amounting to \$23.75, was allowed and order made instructing the Secretary to draw warrant on the Treasurer therefor.

Order that the committee do now adjourn.

GEO. E. COLE,

Secretary.

On motion the acts of executive committee were approved. Mr. Ellsworth offered the following resolution, Whereas the Congress of the United States on the 25th day of July, 1866 passed an act entitled "An Act to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon, and

Whereas such act provided that such company thereafter organized under the laws of Oregon and designated by the Legislature of such State should be entitled to receive and manage the said grant in Oregon, said act further requiring that the company so organized and designated should within from the date of its passage (to-wit July 25th, 1866) file its assent in the Department of the Interior, and whereas no Company was designated by such legislation within one year within which such assent was required to be filed, and

Whereas, The Legislature of the State of Oregon

did at its regular session in October, A. D. 1868, pass the following joint resolution designating this company (to-wit "The Oregon Central Railroad Company" of Salem, Oregon, a company duly incorporated and organized under the laws of the State of Oregon) as the company to take and manage such grant and receive all the benefits of the same in the State of Oregon.

"Senate Joint Resolution No. 16

"Whereas the Congress of the United States by an act approved July 25th, 1866, entitled, "An act to aid in the construction of a Railroad and telegraph from the Central Pacific Railroad to Portland, in Oregon" did grant certain lands in the State of Oregon and confer certain privileges upon such company organized under the laws of Oregon, as the Legislature of such State should thereafter designate.

And Whereas, The Legislative Assembly of Oregon at its Fourth Regular Session did adopt a joint resolution known as "House Joint Resolution No. 13" designating in terms "The Oregon Central Railroad Company" as the company entitled to receive the land granted by, and all the benefits and privileges of said act of Congress.

And Whereas: at the time of the adoption of the said joint resolution as aforesaid no such company as the Oregon Central Railroad Company was organized or in existence. And the said point resolution was adopted under a misapprehension of facts as to the organization and existence of such a company.

And Whereas: The designation of the Company to receive the lands in the State of Oregon granted and the benefits and privileges conferred by the said act of Congress yet remains to be made: Therefore

Be it resolved by the Senate, the House concurring, That the Oregon Central Railroad Company, a corporation organized at Salem on the second day of April in the year one thousand eight hundred and sixty-seven under and pursuant to the laws of the State of Oregon, be, and the same is hereby designated as the company entitled to receive the lands in Oregon and the benefits and privileges conferred by said act of Congress."

And Whereas the Congress of the United States did in April, A. D. 1869, pass an act amendatory of the said act of July 25, 1866, extending the time in which the company designated might file its assent, which act was approved by the President of the United States April 10, 1869 and is entitled "an act to amend an act entitled an act granting lands to aid in the construction of a Railroad and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon approved July 25, 1866."

Therefore Resolved:—

That this Company, The Oregon Central Railroad Company of Salem, Oregon, incorporated Salem, Oregon, April 22, 1867, do hereby accept all the provisions, rights, privileges and franchises of said act of July 25, A. D. 1866, entitled "An act granting lands to aid in the construction of a Rail-

road and Telegraph line from the Central Pacific Railroad in California to Portland in Oregon" and of all acts amendatory thereof and upon the conditions therein specified, and do hereby give our assent, and the assent of such company thereto, and the Secretary of this Company is hereby instructed to prepare a true copy of this Resolution, certified to under the seal of the Corporation signed by himself as Secretary and by the President of this Company, and such certified copy transmit to and file the same with and in the office of the Secretary of the Interior at Washington City, D. C.

Which resolution was unanimously adopted.

On motion of Mr. Ellsworth it was Resolved that the President be authorized to negotiate a loan not exceeding \$4000 to pay off the outstanding notes against the company.

Whereupon the meeting adjourned until 7 o'clock P. M.

Approved

GEO. E. SOLE,
Secretary.

I. R. MOORES,
Prest.

Tuesday, June 8th, 1869. 7 P. M.

The meeting was called to order by the President. Present J. R. Moores, Pres., J. H. Moores, A. Bush, J. H. Foster, E. N. Cooke, F. A. Chenoweth & T. Mc F. Patton at which the following proceedings were had to-wit:—

Resolved That the line of route as surveyed and platted and upon which work has been done by the contractors for this company is hereby approved as far as the same has been done from East Portland to the Santiam River, and that the President and Engineer are instructed to have the Corporate Seal of the Company attached to all necessary maps designating the line of route.

The following report of committee was read:

"To the Board of Directors of the O. C. R. R. Co.

We, the members of the Board of Directors of your company elected April 23rd, 1867, appointed a committee on the account of S. A. Clarke Secretary for that year, would report that Mr. Clarke rendered efficient service devoting much of his time exclusively to the business of the corporation, its correspondence and the issuance of its bonds, that the sum of \$1800 salary heretofore awarded him per annum is justly due him for that year, and we recommend that it be paid.

Salem, June 8, 1869.

E. N. COOKE

S. ELLSWORTH

T. Mc F. PATTON,

J. H. MOORES

F. A. CHENOWETH,

Committee.

which upon motion said report of committee was adopted and the secretary instructed to draw order therefor.

Mr. Mitchell, the attorney of the company in person appearing and stating to the Board of Directors that he could not serve in the capacity of the company's attorney for the salary (to-wit \$2000) fixed as said attorney's salary at the last annual meeting (to-wit April 6th, 1869) and would therefore decline acting as the company's attorney unless additional compensation was provided by the company, and suggesting that he would be satisfied with the salary of \$3000, and attend to all the legal business of the company (right of way business excepted) and that for the additional compensation of \$1000, would also attend to right of way suits it was therefore upon motion of Mr. Chenoweth resolved that Mr. J. H. Mitchell be allowed the sum of \$3000 as salary for the year commencing April 6th, 1869, and it was further ordered that said J. H. Mitchell be allowed as before agreed the sum of \$5000 for this salary for Yumter ruling April 1st, 1869 and the Secy. be instructed to draw order for such amount as will make the said amount towit \$1250, his account having been settled up till Jan. 1st, 1869. Whereupon the meeting adjourned Sine Die.

GEO. E. COLE,
Secretary.

Approved,
I. R. MOORES,
Prest.

State of Oregon
County of Marion,—ss.

We, John E. Ross, S. F. Chadwick and John F. Miller being severally sworn depose and say that we will each faithfully and honestly discharge the duties of Directors of the Oregon Central Railroad Company to the best of our ability. So help me God.

S. F. CHADWICK.

JOHN F. MILLER.

JOHN E. ROSS.

Subscribed and sworn to before me this the 7th day of Sept. 1869.

Internal Revenue Stamp.

SETH R. HAMMER,

Notary Public.

Tuesday, Sept. 7, 1869. 1 P. M.

A special meeting of the Directors of the Oregon Central Railroad Company was begun and held at Salem, September 7th, 1869, at which the following proceedings were had. Board called to order—the following members were present, Hon. I. R. Moores, President, Directors Geo. L. Woods, E. N. Cooke, J. H. Moores, John F. Miller, Jacob Conser, J. H. Douthitt, A. L. Lovejoy, S. B. Parrish, A. F. Hedges, F. A. Chenoweth, J. H. D. Henderson, S. Ellsworth, S. F. Chadwick, John E. Ross, J. H. Foster, Geo. A. Eades, J. C. Hawthorne, Saml. M. Smith, Geo. W. Weidler.

A communication from Ben Holladay & Co. was read as follows towit:

Mr. President and Directors of the Oregon Central Railroad Company, Gentlemen:

Owing to the fact of the continued opposition made by parties interested in opposing The Oregon Central Railroad Company, and the consequent failure up to this time to negotiate any of the Bonds of the Company (whcih failure is also attributable to the fact that the Stock of the company is under the control and management of a Company composed of gentlemen in Oregon who are not generally known in the financial circle in the east) the contractors have concluded that it would be suicidal in the extreme upon their part to continue any further expenditure of money under their contract with the company unless some arrangements satisfactory to all parties concerned could be effected whereby all the Stocks and bonds of the company could be placed under the ownership and control of the undersigned. And believing as we do that it would be better to lose the amounts already expended rather than incur risk by incurring additional expenditures, we have reluctantly come to the conclusion to abandon all work under the contract unless such arrangement can be effected. In case all the stock and bonds that have been issued by the Company, or in anywise owned by the Company can be transferred to the undersigned we are willing to pledge ourselves for the rapid construction of the first twenty-five miles of the Road within the time fixed by Act of Congress for the completion of the same. We are willing also to assume all reasonable and just debts or liabilities of the Company due, or owing at this date. The sum total of such debts, and

the amount of each, and to whom owing to be ascertained and fixed by a committee of three of the Directors and the undersigned: provided such committee and the undersigned can agree upon the amounts thereof. And in addition to this we are willing to make execute and deliver to the present directors and principal stockholders of the company a penal bond in any reasonable amount that your body may designate, conditional that we will forever save, indemnify, and keep harmless each and all of such Directors and stockholders from any and all claim, liability or demand which we, or any other creditor of the Company may now have or at any time hereafter have had against the company or against such company or against such directors or stockholders by reason of their having at any time been such directors or stockholders.

In the event that this proposition is accepted we shall proceed with vigor to the completion of the first twenty miles of the road this present fall and next summer direct on to Salem, and thereafter vigorously continue its construction to the Southern part of the State; otherwise although reluctant to do so, we are compelled to abandon the enterprise at once. It may not be improper here to state that this communication is not submitted in any spirit of arbitrary dictation, as we have from our first connection with the enterprise regarded each member of your board with respect and confidence, which feeling we hope may continue whatever may be the result of these negotia-

tions, but on the contrary we submit this proposition as the final result of our calm deliberate judgment believing as we do that its acceptance will place the undersigned in a position that will enable them to negotiate their bonds and thus secure the speedy construction of the road, and without this the enterprise must be a failure.

(Signed) BEN HOLLADAY & CO.

On motion of A. L. Lovejoy the communication just read was referred to a committee of three to be elected by the board to confer with Ben Holladay & Co. in relation to the proposition made by them to audit the accounts of the Company and ascertain if they can agree upon the same and report to the Board.

On motion of F. A. Chenoweth, the committee were elected by Ballot which resulted in the election of J. H. Moores, S. F. Chadwick, and J. F. Miller.

On motion of J. H. Douthitt the committee were instructed to proceed at once to consult the contractors and report as soon as possible.

On motion the meeting do now adjourn till 4 o'clock.

GEO. E. COLE,
Secretary.

Approved,

I. R. MOORES,

Prest.

4 P. M. Tuesday Sept. 7th, 1869.

Board met pursuant to adjournment. Present same Directors as at the previous meeting.

S. F. Chadwick, Chairman of Committee on conference with the contractors as follows towit:

To the O. C. R. R. Co. of Salem, Oregon.

Your committee appointed to examine the accounts and indebtedness of the Company to date, report that Mr. Holladay has agreed that the following accounts be paid towit:

Salary of President annually be allowed to I. R.

Moores, Prest.	\$1750
First Year	1200
Second year	800

Salary of Treasurer E. N. Cooke \$200 per annum.

From the following accounts be deducted 33 1-3 per cent:

T. Mc F. Patton	216
J. H. Moores	200
A. L. Lovejoy	904
J. H. Douthitt	1207
F. A. Chenoweth	800
J. Conser	591.75
S. B. Parrish	552
J. H. D. Henderson	360
S. Ellsworth	400
Geo. L. Woods	96

Accounts for stationery, rents and wood, etc. be paid in full.

To J. H. Mitchell in lieu of \$4750. \$3000, all payable in gold coin without interest.

One note due August 6th, 1870 for four thousand dollars.

The following amounts to be paid Directors are for services to date and payable twelve months after date without interest gold coin upon the surrender of the stock warrants and subscription lists now in their hands.

Respectfully submitted,

JOHN F. MILLER,

J. H. MOORES,

S. F. CHADWICK.

Sept. 7, 1869.

I agree to the above.

BEN HOLLADAY & CO.

On motion of Mr. Ellsworth was adopted as a basis of settlement with Ben Holladay & Co.

On motion the company's attorney was instructed to draw up contracts and bond to carry out the settlement herein reported and submit the same to the Board.

Adjourned till 8 o'clock P. M.

Tuesday 8 P. M. Sept. 7th, 1869.

Board met pursuant to adjournment. Letter from Secretary of the Interior notifying the Company that assent of the company of Land Grant had been filed in his office was read and ordered placed on file.

Resignation of Geo. A. Facles was read and accepted by the Board.

Report of Committee on conference with the contractors was again read and discussed and the words "and subscriptions lists" stricken out and adopted.

The following resolution was offered by Mr. Love-

joy and on motion adopted.

Resolved That the Secretary of this Board be and he is hereby instructed to issue forthwith to Ben Holladay the thirty-nine thousand nine hundred and thirty (39,930) shares of the original capital stock in the corporation the same being the number of shares not heretofore issued of the 70000 shares originally subscribed for by Geo. L. Woods on the day of April, A. D. 1867 for the use and benefit of the company, the said Ben Holladay having this day become the purchaser of said shares from this company by the assumption on his part of the present indebtedness of the company at rates agreed upon.

The following contract was read and executed.

Agreement made this 7th day of Sept. A. D. 1869, between Ben Holladay and Company and I. R. Moores, S. A. Clarke, E. N. Cooke, T. Mc F. Patton, J. H. Moores, A. L. Lovejoy, A. G. Hedges, J. H. Douthett, F. Chenoweth, Jacob Conser, S. B. Parrish, J. H. D. Henderson, S. Ellsworth, Geo. L. Woods, John F. Miller, J. H. Miller, as follows, towit: The said persons of the second part herein do hereby agree to surrender up and transfer to Ben Holladay each and all the shares of stock they have in the Oregon Central Railroad Company (save and except one share to such of said persons which they are to reserve) and in consideration thereof the said persons do hereby agree to accept the following such each towit: J. R. Moores, the sum of \$2483.00, S. A. Clarke \$1350.00, E. N. Cooke, \$483.00, T. Mc F. Patton,

\$144.00, J. H. Moores, \$133.33, A. L. Lovejoy \$602.67, A. F. Hedges \$533.83, J. H. Douthitt, \$804.67, F. A. Chenoweth, \$533.33, Jacob Conser, \$394.50, S. B. Parrish, \$368, J. H. D. Henderson, \$240.00, S. Ellsworth, \$266.67, Geo. L. Woods, \$64.00, J. H. Mitchell, \$3000.00, in gold coin in full coin in full satisfaction of all claims and demands which each of said persons have up to this date against the Oregon Central Railroad Company. The same to be paid in one year from this date, each of which amounts the said Ben Holladay & Co. do hereby agree to pay to said persons respectively in one year from this date in coin without interest and each of said persons of the second part upon the execution of this agreement hereby agrees to transfer and deliver to said Ben Holladay & Co. the whole amount of claims whether warrants or otherwise now held by him against the Oregon Central Railroad Company, the said Ben Holladay & Co. further hereby agree to pay a certain promissory note heretofore executed by the Oregon Central E. R. Co. in favor of Ladd & Bush for the sum of Four Thousand Dollars in coin, which note is due August 6th, 1870—Said note is endorsed by certain of the parties above named, and shall be paid when due by said Ben Holladay & Co.

Witness the hands of the parties this 7th Sept. 1869.

BEN HOLLADAY & CO.

J. R. MOORES

E. N. COOKE.

J. H. D. HENDERSON

J. H. DOUTHITT
A. L. LOVEJOY
A. F. HEDGES
JOHN F. MILLER
S. B. PARRISH
JACOB CONSER
J. H. MITCHELL
F. A. CHENOWETH
J. H. MOORES
S. ELLSWORTH
GEO. L. WOODS
S. A. CLARKE

Witness

GEO. E. COLE

On motion the meeting adjourned till tomorrow morning at 10 o'clock.

Approved

I. R. MOORES,

Prest.

GEO. E. COLE,

Secy.

Wednesday Sept. 8th, 10 A. M.

The Board met pursuant to adjournment.

Present same as yesterday.

Mr. Douthitt moved the following.

Resolution which was adopted

Resolved that each director holding subscription books for the present as agent for the company are to make an arrangement so far as is practicable with all persons heretofore subscribing for stock to release

all claim for stock to the company and to change such subscription into donations and each director is hereby prohibited from taking any further subscription from any one to the stock of this Company.

On motion of Mr. Ellsworth the President of this Company was and is hereby authorized to complete any arrangements necessary to perfect and carry out the foregoing agreements.

The following was handed the secretary for record on the Journal by S. G. Elliott, "I hereby appoint and constitute S. G. Elliott my attorney in fact in my name place and stead to make all necessary arrangements with certain parties in Oregon, for the construction of a Railroad from Portland South through the Willamette Valley—a distance of one hundred and fifty miles, and all necessary arrangements for the early commencement of the work with full power to said S. G. Elliott as my attorney to do everything I could in the premises if personally present.

Witness my hand and seal this 20th day of March, 1867.

ALBERT J. COOK.

Wit

50 ct. R. Stamp Cancelled.

On motion of Mr. Conser the meeting adjourned sine die.

Approved

I. R. MOORES,

Prest.

GEO. E. COLE,
Secretary.

At a regular meeting of the Directors of the Oregon Central Railroad Company begun and held at Salem on Tuesday the day of October, A. D. 1869. Present I. R. Moores, President, there being no quorum present. Adjourned sine die.

Approved

I. R. MOORES,
President.

GEO. E. COLE,
Secretary.

A special meeting of the Oregon Central Railroad Company was on Tuesday March 8th, 1870, there were present.

PRESIDENT I. R. MOORES
GEO. L. WOODS
A. F. HEDGES
J. C. HAWTHORNE
SAM'L L. SMITH
A. L. LOVEJOY
and GEO. W. WEIDLER

at which the following resolution was unanimously adopted.

Resolved that the line of route as surveyed and plotted by Chief Engineer Brooks and his assistants from the Santiam River in Section 11 Township 10 South Range 3 West to the South line of Township 27 South Range 6 west is hereby adopted and approved, and that the President and Chief Engineer of the Company be instructed to have the corporate seal of the company attached to all necessary maps designating the line of route.

On motion the meeting adjourned sine die.

March 8th, 1870.

GEO. E. COLE,
Secretary.

Approved

I. R. MOORES,
President.

A special meeting held at Salem on the 14th day of March A. D. 1870 the following members were present.

Hon. I. R. Moores, Pres., A. H. Lovejoy, Geo. W. Weidler, Sam'l M. Smith, S. Ellsworth, J. H. Foster, F. A. Chenoweth.

Monday March 14th, 1870.

7 o'clock P. M.

In pursuance of personal notice given in writing personally to each of the Directors of this corporation more than ten days prior to this date, and also in pursuance of the publication for ten successive days, in the Daily Oregonian, and Daily-Herald, published in Portland, in Multnomah County, State of Oregon of the following notice to-wit:—

“Directors meeting

The Directors of the Oregon Central Railroad Company of Salem, Oregon, are hereby notified that there will be a meeting of the Board at the office of the Company in Salem, Oregon on Monday the 14th day of March, A. D. 1870 at 7 o'clock P. M. A full attendance is requested as business of importance will come before the Board.

By order of

I. R. MOORES, Prest.

GEO. E. COLE, Secretary."

The Board of Directors met at the office of this Company in Salem, Oregon, this Monday March 14th, 1870 at seven (7) o'clock P. M. present I. R. Moores, President, E. N. Cooke, J. H. Moores, John F. Miller, Geo. L. Woods, Jacob Conser, F. A. Chenoweth, S. Ellsworth, Geo. W. Weidler, S. M. Smith, A. H. Lovejoy, A. Bush, and J. H. Foster, also present Geo. E. Cole, Secretary and J. H. Mitchell, attorney of the company.

The Board was called to order by the President, I. R. Moores and the following Resolutions were offered by S. Ellsworth and on his motion the same were unanimously adopted, all the directors as aforesaid voting in the affirmative, in favor of their adoption, to-wit:

Resolved, That a meeting of the stockholders of the Oregon Central Railroad Company, of Salem, Oregon, be and the same is hereby called to be held at the Office of the Company in Salem, Oregon on Monday the 28th day of March, A. D. 1870, for the purpose of considering the propriety of, and authorizing the dissolution of such corporation, the settling of its business, disposing of its property, and the division of its capital stock.

Resolved, That the Secretary of this Company be, and he is hereby authorized and directed to give notice of such meeting and of the purpose thereof by publication of the same for ten days in the following newspapers to-wit: The Daily Oregonian and the

Daily Herald, published at Portland, Oregon and the Daily Statesman published at Salem, Oregon.

On motion the Board adjourned to meet at the office of the company at Salem, Oregon, on Monday March 28th, A. D. 1870 at 6 o'clock P. M.

GEO. E. COLE,
Secretary.

Approved,
I. R. MOORES,
President.

Office of the Oregon Central Railroad Company,
Salem, Oregon.

March 28th, A. D. 1870, 6 o'clock P. M.

Pursuant to adjournment of the Board of Directors ordered March 14th, 1870, and of the call of the President on notice given the Board of Directors of the company met at their office in Salem this March 28th, 1870 at 6 o'clock P. M. present I. R. Moores, President, John F. Miller, A. Bush, J. H. Moores, Geo. L. Woods, J. C. Hawthorne, Geo. W. Weidler, A. L. Lovejoy, E. N. Cooke, J. H. Douthitt, Jacob Conser and James H. Foster. I. R. Moores, President in the chair, Geo. E. Cole, Secretary, and J. H. Mitchell. Whereupon the following communication from the contractors Ben Holladay & Company was presented and read

That is to say:

Communication

Office of Ben Holladay & Co.
Portland, Oregon.

March 28th, 1870.

To the President and Directors of
The "Oregon Central Railway Company."

Gentlemen:—

Under the following existing contracts, towit: a contract or memorandum of Agreement made the 23rd day of April A. D. 1867, by and between the "Oregon Central Railroad Company of the first part and A. J. Cook of the second part: also a contract or agreement supplemental thereto, and amendatory thereof, made and entered into between the said "Oregon Central Railroad Company" of the one part, and the said A. J. Cook or A. J. Cook and company of the other part, the 27th day of November, 1867. Also a certain other contract or articles supplementary thereto or amendatory thereof, made the 10th day of June, A. D. 1868, between the Oregon Central Railroad Company, of the one part and A. J. Cook & Co. of the other part, and also a certain other contract or memorandum of agreement made the 12th day of May, 1868, by and between the "Oregon Central Railroad Company" of the first part and the firm of A. J. Cook and Company of the second part. All of which contracts and agreements original and supplemental, were on the 12th day of September A. D. 1868, by the consent and with the agreement of your Company, assigned, transferred and set over to the undersigned. The undersigned Ben Holladay and company **have constructed and equipped twenty miles of railroad and telegraph line**, commencing at East

Portland and running thence southerly ,and have in such work: and in further work done under such contracts and agreements, expended moneys and incurred liabilities to a large amount, that is to say to an amount not less than eight hundred thousand (\$800,000) Dollars in U. S. Gold coin, nor more than One Million (\$1,000,000) Dollars, the exact amount of which cannot now be stated.

That owing to the fact that ever since the undersigned purchased into such contracts, one of more actions or suits have been pending in the Courts of Oregon, where the right to the use of your corporate name has been questioned by another company, the securities and stocks of your company received under such contracts have been rendered almost valueless, and your contractors have for such reason been prevented from negotiating the same, and from proceeding with the construction of the railroad commenced and partly completed. Under these circumstances we respectfully submit the following propositions for your consideration and acceptance.

First:—All bonds of the “Oregon Central Railroad Company” delivered under or in pursuance of any of the contracts aforesaid, shall be surrendered up to the Company.

Second:—All stocks of the “Oregon Central Railroad company,” standing in its books in the name of Ben Holladay and company, shall within one month from this date be surrendered and delivered up to your company to be cancelled:—

Third:—The Oregon Central Railroad and telegraph line so far as completed, together with an uncompleted portions of the line, including all rolling stock and other property belonging thereto or connected therewith, shall be surrendered up and delivered to the possession of the “Oregon Central Railroad Company,” and all mills, machine shops, machinery, tools, implements, horses, mules, carts, live stock and all property of every name and description now owned by or standing in the name of Ben Holladay and Company in Oregon: or in their possession, and intended for use in and about the construction of such railroad shall be transferred, conveyed and delivered to your company,

Fourth:—The “Oregon Central Rail Road Company,” by a resolution of the Board of Directors assume and agree to pay, or cause to be paid to Ben Holladay and Company, within two years from this date the full amount in Gold Coin of the United States of the moneys expended the liabilities incurred as aforesaid by said Ben Holladay & Co., including all expenses incurred and moneys paid by said company in defending the Corporate rights of such Corporation, and in securing and establishing its franchises, the exact amount of all which is not less than eight hundred thousand (\$800,000) Dollars, nor more than One Million (\$1,000,000) Dollars; and shall be settled and agreed upon by a committee, consisting of one member of your board of Directors and one member of the firm of Ben Holladay & Co., and if they

cannot agree, then two shall select a third as umpire, whose decision shall be final, interest to be paid on such amount from date at the rate of one per cent per month.

Fifth:—All the contracts and agreements hereinbefore referred to, shall be cancelled by both parties.

Your early consideration of these propositions is respectfully requested at an early day, and should they meet with your approval a Resolution of your Board of Directors accepting them and agreeing to the terms proposed shall be recognized by us as an execution by both parties, if a contract between the "Oregon Central Railroad Company" and ourselves on the terms and conditions herein proposed and in such event the following endorsement shall be placed across the face of the original contracts and whereby the same shall be cancelled, and signed by both parties to wit:—

In consideration of One Dollar paid by each of the parties hereto by the one to the other, and the receipt whereof is by each of the parties hereto acknowledged, and in consideration of other valuable considerations moving from each to the other. It is hereby agreed between the "Oregon Central Railroad Company," and Ben Holladay & Co., parties to the within contract, that the within contract be and the same is hereby cancelled, set aside, and held for naught.

Witness the hands of Ben Holladay & Co and the "Oregon Central Railroad Company," by the signatures of I. R. Moores, President, and Geo. E. Cole,

Secretary thereof, and the seal of said Corporation attached, this March A. D. 1870. And an agreement in writing, duly executed and stamped by the parties embodying the foregoing, shall also be entered into.

Very respectfully,

BEN HOLLADAY & CO.

Whereupon J. H. Moores presented the following preamble and Resolution, which upon motion of A. L. Lovejoy, were unanimously adopted:

Whereas the following communication has been received by this company, from Ben Holladay & Co., contractors: That is to say:

Office of Ben Holladay & Co.

Portland,

March 28th, 1870.

“To the, “President and Directors of the “Oregon Central Rail Road Company,”

Gentlemen:

Under the following existing contracts, to-wit: a contract, or memorandum of Agreement made the 23rd day of April A. D. 1876, by and between the “Oregon Central Rail Road Company,” of the first part, and A. J. Cook of the second part: also a contract or agreement supplemental thereto, and amendatory thereof, made and entered into, between the said “Oregon Central Rail Road Company,” of the one part, and the said A. J. Cook of A. J. Cook and company of the other part, the 27th day of November, A. D. 1867. Also a certain other contract or articles supplementary thereto, or amendatory thereof, made the 10th day of June, A. D. 1868, between

the Oregon Central Railroad Company" of the one part and A. J. Cook & Co. of the other part, and also a certain other contract, or memorandum of writing, made the 12th day of May, A. D. 1868, by and between the Oregon Central Rail Road Company of the first part, and the firm of A. J. Cook and Company of the second part, all of which contracts and agreements, original and supplementary, were on the day of September, A. D. 1868, by the consent and with the agreement of your company, assigned, transferred and set over to the undersigned. The undersigned Ben Holladay and Company have constructed and equipped twenty miles of railroad and telegraph line, commencing at East Portland, and running thence southerly; and have in such work and in further work done under such contracts and agreements, expended money and incurred liabilities to a large amount; That is to say, to an amount not less than eight hundred thousand (\$800,000) Dollars (167) in United States Gold Coin; nor more than one million (\$1,000,000,) Dollars, the exact amount of which cannot be stated. That owing to the fact, that ever since the undersigned purchased into such contracts, one or more actions or suits have been pending in the Courts of Oregon, wherein the right to the use of your Corporate name has been questioned by another company, the securities and stocks of your company, received under such contracts, have been rendered valueless; and your contractors have, for such reason been prevented from negotiating the same, and from proceeding with the construction of the railroad commenced and partly complet-

ed, under these circumstances we respectfully submit the following proposition for your consideration and acceptance.

First. All bonds of the Oregon Central Railroad Company, delivered under or in pursuance of any of the Contracts aforesaid, shall be surrendered up to the Company.

Second. All stocks of the Oregon Central Railroad Company, standing on the Books, in the name of Ben Holladay and Company, shall within one month from this date be surrendered and delivered up to your company.

Third. The Oregon Central Railroad Company and Telegraph line, so far as completed, together with the incompletd portions of the same, including all rolling stock and other property belonging thereto, or connected therewith, shall be surrendered up and delivered to the Possession of the Oregon Central Railroad Company, and all mills, machine shops, machinery, tools, implements, horses, mules, carts, oxen, live stock, and all property of every name and description now owned by, or standing in the name of Ben Holladay and company, in Oregon or in their possession and intended for use in and about the construction of such railroad, shall be transferred, conveyed, and delivered to your company.

Fourth. The Oregon Central Railroad Company shall by a resolution of the Board of Directors assume and agree to pay or cause to be paid to "Ben Holloday and company," within two years from this date the full amount in Gold Coin of the United States of the moneys expended, the

liabilities incurred as aforesaid by said Ben Holladay & Co. including all expenses incurred and money paid out by said company in defending the corporate right of such Corporation, and in securing and establishing its franchises, the exact amount of all which is not less than Eight Hundred Thousand (\$800,000) Dollars, nor more than One Million (\$1,000,000) Dollars, and shall be settled and agreed upon by committee consisting of one member of your board of directors and one member of the firm of Ben Holladay & Co. and if they cannot agree, then two shall select a third as umpire, whose decision shall be final, interest to be paid on such amount from date at the rate of one per cent per month.

Fifth. All the contracts and agreements hereinbefore referred to shall be cancelled by both parties.

Your early consideration of these propositions is respectfully requested at an early date; And should they meet with your approval, a resolution of your Board of Directors, accepting them and agreeing to the terms proposed, shall be recognized by us, as an execution by both parties, of a contract between the Oregon Central Railroad Company," and ourselves, on the terms and conditions herein proposed; and in such event the following endorsement shall be placed across the face of the original contracts and whereof the same shall be cancelled by both parties, towit:

In consideration of one dollar paid by each of the parties hereto, by the one to the other, and the receipt whereof is by each of the parties hereto, hereby acknowledged and in consideration of other valuable considerations

moving from each to the other ; It is hereby agreed between the "Oregon Central Railroad Company" and Ben Holladay and company, parties to the within contract, that the within contract be and the same is hereby cancelled, set aside and held for naught.

Witness the hands of Ben Holladay & Co. and the "Oregon Central Railroad Company," by the signatures of I. R. Moores, President, and Geo. E. Cole, Secretary thereof; and the seal of said Corporation attached, this March A. D. 1870. And an agreement in writing, duly executed and stamped by the parties, embodying the foregoing, shall also be entered into.

Very respectfully,

(Signed) BEN HOLLADAY & CO.

And whereas: the statements contained in such communication, are true:

Therefore Resolved:

That this Corporation do hereby accept the propositions contained in such communications of Ben Holladay and company;

Resolved: That the Company do hereby accept the propositions contained in such communication of Ben Holladay and Company the Railroad and Telegraph line of the "Oregon Central Rail Road Company," so far as completed, together with all uncompleted parts, including also all the property and rolling stock, owned by such company, including also all stock in this company, standing on the books, in the name of Ben Holladay & Co., which stock shall be transferred, at the request of this Company, including all the property standing in the

name of Ben Holladay & Co. or in their possession as stated in the foregoing communication.

Resolved: That in consideration thereof, this company agrees to pay Ben Holladay & Co. the whole cost of the construction of such road, including all costs and expenses hereinbefore referred to in such communication and the said amount of all which shall be ascertained, settled and agreed upon in the manner prescribed in such communication, and the same shall be paid in United States Gold Coin, within two years from this date, together with interest from this date at one per cent per month in like coin.

Resolved:

That all said contracts referred to in said communication, be and the same are hereby rescinded; And the President and Secretary of this Company are hereby directed to cancel each thereof, in the manner prescribed in such communication aforesaid.

Resolved:

That the President and Secretary of this Company, be and they are hereby instructed, to enter into a written contract with said Ben Holladay & Co. on behalf of this company, and in its name, which contract shall embody the provisions and purposes contained in these resolutions.

"The following communication from the "Oregon and California Rail Road Company" was presented by the attorney of this Company, which was read, and on motion of A. S. Lovejoy was ordered spread upon the record:—Communication.

Office of the Oregon and California
Rail Road Company
Portland, Oregon,
March 28th, 1870.

To the President, Stockholders and Board of Directors
of the Oregon Central Railroad Company of Salem, Ore-
gon.

Gentlemen:

I respectfully beg leave to submit for your considera-
tion the following proposition from the Oregon and Cali-
fornia Railroad Company, which I do in the form of the
following resolution of the Board of Directors of that
Corporation, passed March 26th, A. D. 1870, at the of-
fice of their company at Portland, Oregon, towit: Re-
solved. That the President of this Company, be and he
is hereby authorized and instructed to enter into ne-
gotiations with the Oregon Central Railroad Company,
of Salem, Oregon, incorporated April 22nd, 1867, for
the purchase by this company of the railroad of such cor-
poration, now partly completed and in progress of con-
struction, including all the rolling stock and other prop-
erty connected therewith, and including also all the prop-
erty real, personal and mixed, now owned by such "Ore-
gon Central Railroad Company" or to which it may in
anywise be entitled and including also all franchises of
the said corporation which it now owns or to which it is
or may be entitled by virtue of any act, or resolutions of
Congress or of the Legislature of the State of Oregon;—
or in any manner;—and for such purpose, the "Presi-
dent of this Company" is further authorized to agree

in writing in the name of this Company, and under its seal for such purchase by and transfer to this company of all such property, rights, and franchises upon the following terms. Towit: That in consideration of such conveyance, transfer and delivery to this company, it shall agree to and with the Oregon Central Rail Road Company, its Directors and Stockholders, to assume and shall assume and agree to pay all the debts and liabilities of such "Oregon Central Rail Road Company," as the same matures and becomes due and payable of whatever name and nature, and this company shall also indemnify and forever keep harmless, the said "Oregon Central Rail Road Company" from any and all such payments and from all liability whatever, of every name and nature for which said "Oregon Central Rail Road Company" may be liable at the date of the acceptance of these propositions.

To the propositions contained in the foregoing resolutions an early answer is desired.

Very respectfully,

BEN HOLLADAY,

President of Oregon and
California Rail Road Company.

Whereupon in answer to such communication, A. L. Lovejoy offered the following preamble and resolutions, which upon his motion were unanimously adopted.

Whereas, The following communication has this day been received from the Oregon and California Rail Road Company, a corporation incorporated and organized at Portland, Oregon, March 17th, 1870, for the purpose

of constructing a railroad and telegraph line from Portland, Oregon, southerly through the Willamette, Umpqua and Rogue Valleys to the South Boundary of Oregon, in accordance with an Act of Congress approved July 25th, A. D. 1866, granting lands for such purpose and amendments thereto, Towit:

Office of Oregon and California
Railroad Company
Portland, Oregon
March 28th, 1870.

To the President and Board of Directors of the "Oregon Central Railroad Company" of Salem, Oregon.

Gentlemen:

I respectfully beg leave to submit your consideration the following proposition from the Oregon and California Railroad Company, which I do in the form of the following resolution on the Board of Directors of that Corporation, passed March 26th, A. D. 1870, at the office of their company in Portland, Oregon, towit: Resolved, That the President of this Company, be and he is hereby authorized and instructed to enter negotiations with the Oregon Central Railroad Company, of Salem, Oregon, incorporated April 22nd, 1867, for the purchase by this company of the railroad of such corporation, now partly completed and in process of construction, including all the rolling stock and other property connected therewith, and including also all the property real, personal and mixed, now owned by such "Oregon Central Railroad Company" or to which it may in anywise be entitled and including also all franchises of the said cor-

poration which it now owns or to which it is or may be entitled by virtue of any act or resolutions of Congress or of the Legislature of the State of Oregon:—or in any way or manner:—and for such purpose, the “President of this Company” is further authorized to agree in writing in the name of this Company, and under its seal for such purchase by and transfer to this company of all such property, rights and franchises upon the following terms, to wit:—That in consideration of such conveyance, transfer and delivery to this company, it shall agree to and with the Oregon Central Rail Road Company, its Directors and Stockholders, to assume and shall assume and agree to pay all the debts and liabilities of such “Oregon Central Railroad Company” as the same matures and becomes due and payable of whatever name and nature, and this company shall also indemnify and forever keep harmless, the said “Oregon Central Railroad Company” from any and all such payments, and from all liability whatever, of every name and nature for which said “Oregon Central Rail Road Company” may be liable at the date of the acceptance of these propositions.

To the propositions contained in the foregoing resolutions an early answer is desired.

Very respectfully,

BEN HOLLADAY,

President of Oregon and California
Rail Road Company.

“And Whereas, This Company is today indebted in a large amount to wit: in a sum not less than eight hundred thousand (\$800,000) Dollars no more than

Dollars in Gold

Coin of the United States, and which former sum is equivalent in value under existing circumstances to that of all the property and franchises owned or possessed by this Company, or to which it is in anywise entitled.

And whereas: There has heretofore existed divers controversies in the Courts and there is one suit pending of a similar nature, wherein the right of this company to use its Corporate name, has been and is questioned by another company, and by reason whereof the securities of this company have been weakened, and rendered comparativeless valueless, and which have prevented this company and its contractors from negotiating the same, and from proceeding with the construction of its rail road, and which have resulted in this company being driven to a cancellation of its contract for the construction thereof.

Therefore Resolved, That is the judgment of this Board that it is for the best interests of the company and all its stockholders to accept the proposition embodied in the foregoing communication:

Resolved: That this Company, (subject however to the approval by a majority vote of the stock of this corporation) do accept the foregoing proposition of the "Oregon and California Rail Road Company."

Resolved: That the President and Secretary of this Company be and they are hereby authorized and directed to enter into an agreement in writing in the name of this company, with said "Oregon and California Rail Road Company," for a sale of all the property and franchises of this corporation upon the terms embodied in

the foregoing proposition, which agreement shall however be subject to the approval or disapproval of a vote of a majority of the stock in this company, at a stockholders meeting hereafter to be held.

Whereupon, the following conveyance and contracts being executed and submitted to the Board were on motion of G. L. Woods by an unanimous vote ordered to be spread upon the record.

Conveyance.

Know all men by these presents, that we the undersigned Ben Holladay and Company, of Portland, Oregon, in consideration of the cancellation this date by the "Oregon Central Railroad Company" at Salem, Oregon, of all certain contracts in writing heretofore existing between said company and the undersigned, in relation to the construction of a rail road and telegraph line from Portland, Oregon, through the Willamette, Umpqua, and Rogue River Valleys to the California line, and the agreement of such company to pay the undersigned for all moneys laid out, expended, and incurred under such contracts, towit:—An amount not less than eight hundred thousand dollars in U. S. Gold coin. "It being a part of this arrangement that all the property hereinafter specified should be transferred and delivered to said company, and in consideration of the full sum of One Dollar to us in hand paid the receipt whereof is hereby acknowledged, have sold, assigned, set over, transferred, delivered and conveyed, and by these presents, we Ben Holladay & Company, do sell, assign, set over transfer deliver and convey unto said

"Oregon Central Railroad Company," of Salem, Oregon, All saw mills and machinery connected therewith, all machinery, tools, implements, apparatus of every name and description, all live stock, horses, mules, cattle, work oxen, carts, drays, wagons, gearing, tackle and all leases and all property of every name and nature now owned by Co. in the possession of Ben Holladay & Co. all of such property being in the State of Oregon, principally in Multnomah and Clackamas Counties, the same being the mills, machinery, tools, implements, apparatus, live stock, horses, mules, cattle, carts, drays, wagons, gearing tackle, rail road ties, iron rail spikes and other rail-road materials now and heretofore used by us in the construction of the "Oregon Central Rail Road Company." It being the intention of this conveyance to transfer to said "Oregon Central Rail Road Company" all property real and personal of every name and nature now owned or possessed by the undersigned in the State of Oregon.

To have and to hold the said property and every part thereof unto the said "Oregon Central Rail Road Company," of Salem, Oregon, its successors and assigns absolutely and forever.

In witness where of, we have hereto set our hands and seals this 28th day of March A. D. 1870.

BEN HOLLADAY.

C. TEMPLE EMMET.

by BEN HOLLADAY,

Five cent

U. S. R. Stamp

Cancelled

Attorney in fact,

BEN HOLLADAY & CO.

By BEN HOLLADAY.

Agreement.

Memorandum of agreement entered into this 28th day of March A. D. 1870, between the "Oregon Central Rail Road Company," a corporation, incorporated at Salem, Oregon, the 22nd day of April A. D. 1868, party of the first part and Ben Holladay and company of Portland, party of the second part:

Whereas, the parties of the second part Ben Holladay and Company, did on the 12th day of September, A. D. 1868, by and with the consent of the said "Oregon Central Railroad Company," party of the first part herein, take an assignment of certain contracts in writing then existing between said party of the first part herein and one A. J. Cook and A. J. Cook & Co. which contracts related to the construction of a rail road and telegraph line, from Portland, Oregon, Southerly through the Willamette, Umpqua and Rogue River Valleys to the California line, and for a lateral road through Benton County, in Oregon, and for the equipment of such roads, which contracts bear dates as follows: One April 23rd, 1867, between the "Oregon Central Rail Road Company," and Albert J. Cook—one supplemental thereto and amendatory thereof between said "Oregon Central Rail Road Company"—and said A. J. Cook or A. J. Cook & Co. dated on or about the 27th day of November, A. D. 1867, also one certain other contract or articles supplementary thereto or amendatory thereof made on or about the tenth day of June A. D. 1868, between said "Oregon Central Rail Road Company," and said A. J. Cook & Co. Also a certain other contract or memorandum of

agreement, May the 12th, A. D. 1868, or thereabouts between the same parties.

And whereas. The parties of the second part herein have in pursuance of such contracts completed Twenty miles of such Rail Road and Telegraph running from East Portland, Southerly and have equipped the same, and have done other large amounts of work in the further construction of such road under such contracts, and the said Ben Holladay & Co. have expended in all under such contracts, and incurred liabilities in constructing such road and furnishing materials therefor, and in divers other ways and manner connected with the prosecution of such work under such contracts, including large expenses paid in litigation in defending the rights of the company party of the first part herein, and in securing and defending its franchises and establishing its rights, and in procuring right of way, amounting in all to a sum total in U. S. Gold Coin, in not less than Eight Hundred Thousand (800,000) Dollars, nor more than One Million (1,000,000) Dollars, the exact amount of which cannot now be more nearly stated, and

Whereas, Owing to certain controversies that have arisen from time to time in the Courts of Oregon, one of which is still pending and undetermined wherein the right of corporation party of the first part herein to the use of its corporate name. The stocks and securities of the corporation, party of the first part herein have been clouded and greatly weakened, and rendered almost valueless, and wholly unsalable in the market.

“Therefore in consideration of the premises aforesaid and of the sum of One Dollar paid to each of the par-

ties hereto by the one to the other, and the receipt whereof is acknowledged hereby, and of the mutual agreements of the parties hereto—It is agreed by and between the parties hereto as follows:

First... That the parties of the second part herein shall surrender and deliver up to be cancelled to the "Oregon Central Rail Road Company" party of the first part herein, all bonds of such corporation heretofore delivered under or in pusuance of any of the contracts aforesaid.

Second. All stock of the "Oregon Central Rail Road Company" standing on its books in the name of Ben Holladay and Company, or owned by such firm shall within one month from this date be surrendered and delivered up to the Corporation, party of the first part, or to such persons as such Company through its Directors or stockholders may designate to be cancelled or otherwise disposed of.

Third. "The Oregon Central Rail Road and Telegraph line so far as completed, together with all uncompleted portions of the same, including all rolling stock and other property belonging thereto or connected therewith, shall be and is hereby surrendered up and delivered over to the possession, ownership and control of the "Oregon Central Rail Road Company," party of the first part herein,"

Fourth. The "Oregon Central Rail Road Company," party of the first part herein, shall pay or cause to be paid to Ben Holladay and company within two years from this date in United States Gold coin, together with interest therein from date at one per cent per month, the

full amount of all the moneys expended and liabilities incurred as aforesaid by said Ben Holladay and Co., including all expenses incurred, and moneys paid by such company in defending its corporate rights of the party of the first part herein, and in securing and establishing its franchises the exact sum total of all which is not now definitely known, but the sum is not less than Eight Hundred Thousand (800,000) Dollars, nor more than One Million (\$1,000,000) Dollars, and the same shall be ascertained settled and agreed upon by I. R. Moores, President and one of the Directors of the party of the first part and Ben Holladay one of the parties of the second part, and in case they cannot agree, they two shall select an umpire, whose decision shall be final, and the said amount shall be so ascertained and agreed upon within three months from this date.

“Fifth. All the said contracts and agreements hereinbefore referred to shall be, and they are each and all of them hereby cancelled.

“Sixth. Ben Holladay and Company party of the second part herein shall, of even date with these presents, and in consideration of the agreements herein contained, make, execute and deliver to the “Oregon Central Railroad Company” party of the second part, a conveyance and transfer of all the mills, machinery, ties and other railroad material, horses, mules, oxen, tools, implements, carts, drays, wagons now owned by Ben Holladay and company, in Oregon, and heretofore and now used in about the construction of said Rail Road, together with all other property owned by or belonging to Ben Holladay & Co. in Oregon.

In testimony whereof the "Oregon Central Rail Road Company, party of the first part herein has caused its corporate seal to be attached and witness also the signatures of I. R. Moores, its President, and Geo. E. Cole, its Secretary, also witness the hands of Ben Holladay and Company, party of the second part herein.

OREGON CENTRAL RAILROAD COMPANY,
by I. R. MOORES,
President.

OREGON CENTRAL RAILROAD COMPANY,
by GEO. E. COLE,
Secretary.

Ten cents) Seal of)
U. S. R. S.) Corporation)
Cancelled) attached)

BEN HOLLADAY & CO.,
by BEN HOLLADAY,

Witness Present)
A. G. Cunningham)

Agreement.

Articles of agreement made and entered into this 28th day of March, A. D. 1870 between the Oregon Central Rail Road Company, a corporation incorporated at Salem on the 22nd day of April, A. D. 1867, under the general Incorporation law of the State of Oregon, and amendments thereto, party of the first part, and the "Oregon and California Rail Road Company," a corporation incorporated at Portland, Oregon, on the 17th day of March, A. D. 1870, under the laws of Oregon

aforesand party of the second part. Whereas, The party of the first part herein is the owner of the Oregon Central Railroad partly completed and in course of construction and rolling stock and other valuable property and franchises, including all the rights, privileges, benefits, franchises and immunities granted and conferred on the Oregon Company by an Act approved July 25th, 1866, entitled " An Act granting lands to aid in the construction of a rail road and telegraph line from the Central Pacific Railroad in California to Portland in Oregon." Approved July 25th, A. D. 1866 and amendments thereto:

And whereas: said Oregon Central Rail Road Company party of the first part herein, is largely indebted to divers persons, but principally to Ben Holladay and (181) company in an amount not less than Eight Hundred (800,000) Dollars, nor more than Dollars, the exact amount of which is to be hereafter determined, and whereas, It has been agreed as will more fully appear by the following communication and propositions presented to the "Oregon Central Railroad Company," party of the first part herein by the "Oregon and California Rail Road Company," party of the second part herein, and the Resolution of the Board of Directors of the said "Oregon Central Rail Road Company," party of the first part in answer thereto that the said "Oregon Central Railroad Company," party of the first part, shall sell and convey unto the said "Oregon and California Rail Road Company," party of the

second part, all the rail road and other property, both personal and real and all the rights, franchises, privileges and property whatsoever of every name, nature and character, in consideration of an agreement upon the part of the "Oregon and California Rail Road Company," to assume and pay as they may mature and become due all the debts and liabilities of every name and nature of the said "Oregon Central Rail Road Company," and the further agreement to forever save indemnity and keep harmless the said "Oregon Central Rail Road Company," and its stockholders and Directors from all such debts and liabilities, which communication and proposition so made as aforesaid are as follows:—

Office of Oregon and California Rail Road Company.

Portland, Oregon, March 28th, 1870.

To the President and Board of Directors of the "Oregon Central Rail Road Company," of Salem, Oregon.

Gentleman:

I respectfully beg leave to submit for your consideration the following proposition from the "Oregon and California Rail Road Company," which I do in the form of the following resolution of the Board of Directors of that corporation passed March 26th, 1870, at the office of their Company in Portland, Oregon, to wit:—

Resolved, That the President of this Company be and he is hereby authorized and instructed to enter into negotiations with the "Oregon Central Rail Road

Company" of Salem, Oregon, Incorporated April 22nd, 1867, for the purchase of this company of the rail road of such corporation now partly completed and in progress of construction, including all its rolling stock and other property connected therewith and including also all the property real, personal and mixed, now owned by such "Oregon Central Rail Road Company" or to which it may in anywise be entitled, and including also all franchises of the said corporation, which it now owns, or to which it is or may be entitled by virtue of any Act or resolution of Congress, or of the legislature of the State of Oregon or in any other way or manner, and for such purpose the President of this company is further authorized to agree in writing in the name of this corporation and under its seal, for the purchase by and transfer to this company of all such property rights and franchises upon the following terms to wit:— That in consideration of such conveyance, transfer and delivery to this company, it shall agree to and with said "Oregon Central Rail Road Company" and to and with its Directors and stockholders, to assume and shall assume and agree to pay all the debts and liabilities of such "Oregon Central Rail Road Company" as the same mature and become due and payable of whatever name and nature, and this company shall, also indemnify, save and keep harmless the said "Oregon Central Rail Road Company" from any and all such payments and from all liability whatever of every name and nature for which said "Oregon Central Rail

Road Company" may be liable at the date of the acceptance of these propositions."

And Whereas:—In response to the foregoing communication the said "Oregon Central Rail Road Company" did on the 28th day of March, A. D., 1870, by the Board of Directors adopt the following resolution, to wit:—

Whereas the following communications has this day been received by this company from the Oregon and California Rail Road Company, a corporation incorporated and organized at Portland, Oregon, March 17th, 1870, for the purpose of constructing a rail road and telegraph line from Portland, Oregon southerly through the Willamette, Umpqua, and Rogue River Valleys to the south boundary of Oregon, in accordance with an Act of Congress, approved July 25th, A. D., 1866, granting lands for such purpose and amendments thereto, to wit:

Office of Oregon and California Rail Road Company,
Portland, Oregon, March 28th, 1870.

To the President and Board of Directors of the "Oregon Central Rail Road Company,"

Gentlemen:—

I respectfully beg leave to submit for your consideration the following proposition from the "Oregon and California Rail Road Company," which I do in the form of the following resolution of the Board of Directors of that corporation, passed, March 26th, 1870, at the office of their company in Portland, to-wit:

Resolved, That the President of this Company be, and he hereby is authorized and instructed to enter into negotiations with the "Oregon Central Rail-Road Company" of Salem, Oregon, incorporated April 22nd, 1867, for the purchase by this company of the Rail Road of such corporation, now partly completed and in progress of construction, including all the rolling stock and other property connected therewith, and including also all the property real, personal and mixed, now owned by such "Oregon Central Rail Road Company," or to which it may in any wise be entitled, and including also all franchises of said corporation, which it now owns, or to which it is or may be entitled by virtue of any resolution of Congress or of the Legislature of the State of Oregon, or in any way or manner, and for such purpose the President of this Company is further authorized to agree in writing, in the name of this Corporation, and under its seal for such purchase by and transfer to this company of all such property, rights and franchises, upon the following terms, to wit: That in consideration of such conveyance, transfer and delivery to this company, it shall agree and with its Directors and Stockholders, to assume and shall assume and agree to pay all the debts and liabilities of such "Oregon Central Rail Road Company," as they mature and become due and payable of whatever name and nature, and this Company shall indemnify and forever keep harmless, the said "Oregon Rail Road Company," from any and all such payments and from all

liability whatever of every name and description for which said "Oregon Central Rail Road Comapny," may be liable at the date of the acceptance of this prposition.

To the propositions contained in the foregoing Resolutions, an early answer is desired.

Very Respectfully,

BEN HOLLADAY,

President of Oregon and California Rail Road Company.

And Whereas, This Company is today indebted in a large amount to wit: in a sum of not less than eight hundred thousand (\$800,000) Dollars, nor more than Dollars, in gold coin of the United States, and which former sum is equivalent in value under existing circumstances to that of all the property and franchises owned or possessed by this company, or to which it is anywise entitled.

And Whereas, There has heretofore existed divers controversies in the Courts and there is one suit still pending of a similar nature, wherein the right of this company to use its corporate name has been and is questioned by another company, and by reason whereof the securities of this Company have been weakened and rendered comparatively valuleless, and which have prevented this company and its contractors from negotiating the same, and from proceeding with the construction of its rail road and which have resulted in this company being driven to a cancellation of its contracts for the construction thereof:—

Therefore Resolved, That it is the judgment of this Board that it is for the best interests of this company and all its stockholders to accept the proposition embodied in the foregoing communication:

Resolved, That this Company do (subject however to approval by a majority vote of the stock of this corporation) accept the foregoing proposition of the "Oregon and California Rail Road Company."

Resolved, That the President and Secretary of this Company, be, and they are hereby authorized and directed to enter into an agreement in writing in the name of the company, with said, "Oregon and California Rail Road Company" for a sale of all the property and franchises of this corporation, upon the terms embodied in the foregoing propositions, which agreement shall however be subject to the approval, or disapproval of a vote of a majority of the stock in this company at a stockholders' meeting hereinafter to be held.

"Therefore in consideration of the premises and of the valuable consideration moving from one to the other as herein before stated:

The said "Oregon Central Rail Road Company," party of the first part does hereby sell and agree to convey within one week from this date to the "Oregon and California Rail Road Company," party of the second part herein the whole of the Oregon Central Rail Road and telegraph line, and all the rolling stock of such road, and also all property, both real and personal and mixed now owned by the "Oregon

Central Rail Road Company" of whatever name and nature, and all the rights of way, privileges, franchises, and interests whatsoever, both legal and equitable, which the said corporation party of the first part herein now has or owns and especially all the lands, rights, franchises, privileges, emoluments and benefits whatever, which the "Oregon Central Rail Road Company", party of the first part herein now has, or owns, or to which it is or may be entitled either legally or equitably by virtue of the acts of Congress aforesaid, or either or any of them, or of any other Act of Congress, or of any Act or resolution of the legislature of the state of Oregon, or of the Decision of any of the Federal or State Departments or of the Federal or State Courts.

In Consideration Whereof, The said "Oregon and California Rail Road Company," party of the second part herein, hereby covenants and agree to and with the said "Oregon Central Rail Road Company" party of the first part, to assume and agree to pay, and it does hereby assume and agree to pay to whomsoever owing, or may hereafter be due or owing, whenever the same becomes due and payable, all of the debts, obligations and liabilities whatsoever of the said "Oregon Central Rail Road Company" of whatsoever name, nature, or amount, and in the Gold coin of the United States, and the Oregon and California Rail Road Company, does further hereby covenant and agree to and with the "Oregon Central Rail Road Company," party of the first part, to indemnify

and forever save and keep harmless the said "Oregon Central Rail Road Company", against the payment at any time hereafter of any claim or claims, demand or demands that now exist: or which may at any time hereafter arise, or come against such last named corporation, and against all loss, expense, costs, disbursements and damages whatsoever, which the party of the first part, may at any time hereafter be called upon to incur or pay by reason of any such claims or demands.

In testimony whereof, the parties hereto "The Oregon Central Railroad Company," party of the first part, by and through it President, I. R. Moores and Geo. E. Cole, Secretary and the "Oregon and California Rail Road Company," party of the second part by and through its President, Ben Holladay and its Secretary A. G. Cunningham, all of such officers being hereunto duly authorized and empowered as aforesaid, have each caused their names together with the signatures of the said officers respectively to be hereto subscribed and their Corporate Seals attached this 28th day of March, A. D., 1870.

OREGON CENTRAL RAIL ROAD COMPANY.
Seal of Corporation attached.

By I. R. Moores,
President.

Twenty cents U. S. R. S.

OREGON CENTRAL RAIL ROAD COMPANY.

By Geo. E. Cole,
Secretary.

Seal of Corporation attached.

OREGON & CALIFORNIA RAIL ROAD CO.

By Ben Holladay,

President.

OREGON & CALIFORNIA RAIL ROAD CO.

By A. G. Cunningham.

.....Secretary.

Whereupon on motion of J. F. Miller said conveyance was accepted, and said contracts were ratified, and on motion of Geo. L. Woods a recess was taken until tomorrow afternoon 4 P. M. March 29th, 1870.

I. R. MOORES.

Geo E. Cole,

President.

Secretary.

Office Oregon Central Rail Road Company.

Salem, Oregon.

March 28th, 1870, Seven (7), o'clock P. M.

Pursuant to an order of the Board of Directors of this company made March 14th, 1870, calling a meeting of the stockholders of this company to meet at their offices on this March 28th, 1870, at Seven o'clock P. M. and declaring its purpose thereof, and of notice duly given by publication in the Daily Oregonian and Daily Herald, published at Portland, Oregon, and in the Daily Statesman, published at Salem, Oregon for ten successive days prior to this date, as required by such order. The Stockholders of this company met at the office of the company in Salem, Oregon, this March 28th, 1870, at 7 o'clock P. M. the following stockholders being present, to wit:

Ben Holladay and Company represented by Ben Holladay and such firms owning and representing and owning as per stock books of the company, Fifty Thousand One Hundred and Sixty-one (50,161) shares of the common stock and 14,500 shares of preferred interest bearing stock, also the following named stockholders each in person and representing and owning as appears by the stockbooks of the company one share each of the common stock to wit: J. H. Moores, J. H. Douthitt, I. R. Moores, E. N. Cook, Jacob Conser, A. L. Lovejoy, Geo. L. Woods, John F. Miller, Geo. W. Weidler, J. H. Foster, A. Bush, J. C. Hawthorne, and Geo. E. Cole.

On motion of J. H. Miller, it was unanimously resolved that the action of the Board of Directors of this Company in cancelling all contracts existing between this company and Ben Holladay and company for the construction of its rail road, be, and the same is hereby ratified and confirmed.

Geo. L. Woods presented the following resolutions, which were on his motion unanimously adopted by a vote of all the stock present, the vote being by ballot. J. H. Moores and J. F. Miller were appointed tellers and the same resulted as follows. The Secretary also acting as Teller, and the President, I. R. Moores, as inspector and who certified the result as follows, Ben Holladay & Co., by Ben Holladay voted in the affirmative Fifty Thousand One Hundred and Sixty-one votes (50,161) votes, being one vote for each share of the common stock held by Ben Holla-

day & Co. And each of the following stockholders voted in the affirmative each casting one vote for the share so held by him as aforesaid to wit: J. H. Moores, J. H. Douthitt, I. R. Moores, E. N. Cook, Jacob Conser, A. L. Lovejoy, Geo. L. Woods, John F. Miller, Geo. W. Weidler, J. H. Foster, A. Bush, J. C. Hawthorne, Geo. E. Cole. There being no votes in the negative whereupon such resolutions having received the unanimous vote of all the stockholders present and such vote being over two thirds of the whole Capital Stock of this corporation, The Resolution aforesaid were declared by the Presidet. Adopted.

Said Resolution being as follows:

Whereas, the Directors of this Corporation, did at a meeting of their Board, regularly called for such purposes, and held at the office of the company, in Salem, Oregon, on the 12th day of March, A. D., 1870, by a unanimous vote, adopt the following resolutions:

"Resolved, that a meeting of the Stockholders of "The Oregon Central Rail Road Company, of Salem, Oregon, be and "the same is hereby called to be held, at the office of the "Company, in Salem, Oregon, on Monday, the 28th day of March, A. D., 1870, at seven (7) o'clock P. M. for the purpose of considering the propriety of and authorizing the dissolution of such corporation, the settling of the business, disposing of its property, and the division of its Capital Stock."

"Resolved that the Secretary of this Company, be and he is hereby authorized and directed to give notice of such meeting, and of the purpose thereof, by

publication of the same for ten days, in the following daily newspapers, towit: The Daily Oregonian and the Daily Herald, published at Portland, Oregon, and the Daily Statesman, published at Salem, Oregon, and

Whereas, in pursuance of such order of the Board of Directors, the following notice was duly published as prescribed by such Board of Directors, by the Secretary of this corporation, for the period of ten days, in each of the following named newspapers, to wit: The Daily Oregonian, and the Daily Herald of Portland, Oregon, and the Daily Statesman of Salem, Oregon:

Notice to Stockholders of the "Oregon Central Rail Road Company" of Salem, Oregon,—

At a regular meeting of the Board of Directors of the "Oregon Central Rail Road Company," of Salem, Oregon, on the 14th day of March A. D., 1870, the following resolution was unanimously adopted, to-wit:

Resolved, That a meeting of the Stockholders of the "Oregon Central Rail Road Company", of Salem, Oregon, be, and the same is hereby called, to be held at the office of the company, in Salem, Oregon, on Monday the 28th day of March, A. D., 1870, at seven o'clock P. M. for the purpose of determining the propriety of and authorizing the dissolution of such Corporation, the settling of its business, disposing of its property, and the Division of its Capital Stock:"

"Therefore all stockholders in the "Oregon Central Rail Road Company" of Salem, Oregon, are hereby

notified and requested to appear at the office of such company in Salem, Oregon, on Monday, the 28th, day of March, A. D. 1870, at seven (7) o'clock P. M. for the purpose of attending to the transaction of the business specified in the foregoing resolutions.

"By order of the Board of Directors,"—

(Signed) I. R. MOORES,

President Oregon Central Rail Road Company.

Geo. E. Cole,

Secretary.

And whereas, in pursuance of such call of the Board of Directors and such notice, there are now here present, the following named stockholders in this Corporation, each holding, owning and representing the number of shares of stock in this corporation, as hereinafter specified, and constituting in all, more than two-thirds of the whole Capital Stock of this Corporation, to wit: Ben Holladay and Company are the owners and holders of sixty-four thousand six hundred and sixty one (64,661) shares of such stock, that is to say fourteen thousand five hundred (14,500) shares of what is known as preferred interest bearing stock and fifty thousand one hundred and sixty one (50,161) shares of the common stock.

J. H. Douthitt, the owner of one share, and each of the following named stockholders, each of whom owns and represents one share, that is to say, J. H. Moores, I. R. Moores, E. N. Cook, A. L. Lovejoy, Geo. L. Woods, John F. Miller, Geo. W. Weidier, A. Bush, J. C. Hawthorne, Geo. E. Cole.

And whereas, A corporation has been duly incorporated and organized under the General Incorporation laws of this State and the amendments thereto, for the purpose of constructing and operating a Rail Road and Telegraph line from Portland, Oregon, Southerly through the Willamette, Umpqua, and Rogue River Valleys, to the California line, on the southern boundary of Oregon; which corporation has been organized by stockholders herein, representing and controlling over two-thirds of the whole capital stock hereof; and for the sole purpose of carrying out to successful completion, the enterprise for which this corporation was originally formed. The reason for the formation of such new Corporation being to avoid the embarrassments and impediments, constantly being thrown in the way of this enterprise, by certain persons who claim, falsely, to be a corporation, under the laws of Oregon, under the name of the "Oregon Central Rail Road Company," and who have heretofore disputed and still are disputing the right of this corporation to the use of such name: and although such claim upon the part of such alleged corporation has heretofore uniformly failed, in its attempts in Courts to restrain by legal process, our use of such name: and while we believe that all future attempts will be met by like results, yet we are conscious of the fact that that such persons who claim to be such Corporation, have not only the disposition, but the power by vexatious actions and suits, in divers Courts, wherein the right to the use of our Corporate name

may be questioned, to annoy and harrass this Corporation and embarrass its operations, impede the construction of its enterprise, weaken and cloud its securities and injure its credit.

And Whereas, in Consideration of the premises, it is deemed advisable by the stockholders, hereinbefore mentioned and all not present, to dissolve this company and settle up its business, and sell, dispose of, assign, transfer and convey unto the said "Oregon and California Rail Road Company." Such being the name of the Corporation, so formed as aforesaid, all the property, real, personal and mixed, and all the franchises, rights, credits, privileges and emoluments of whatsoever name and nature, owned by or in anywise belonging to this Corporation as per terms of a written agreement between the two corporations for such purchase, dated the day of March, A. D., 1870. Therefore,

Resolved, That the "Oregon Central Rail Road Company", of Salem, Oregon, incorporated April 22nd, 1867, be, and the same is hereby dissolved, to take effect upon the settlement of its business, and the sale, transfer and conveyance of its property and franchises as hereinafter specified:

Resolved, That the President and Secretary of this Corporation, be, and they are hereby authorized, empowered, and directed, to immediately and as soon as practicable, settle all the business of this Corporation.

And Whereas, This Corporation has, in and for the

consideration of the within covenants and agreements upon the part of the "Oregon and California Rail Road Company," to pay all the debts, demands, and liabilities of this company, of every name or nature, as the same mature and become due: and in and for the further consideration of the covenants of such corporation, to forever save, indemnify and keep harmless this company from all claims and demands whatsoever: bargained and sold to such "Oregon and California Rail Road Company" all the property, real and personal, rights and franchises, credits and interests, legal and equitable, determined, absolute, and contingent, of every name and nature, now owned by, or belonging to this corporation.

Therefore Resolved further, That the written contract heretofore entered into between this Company and the said "Oregon and California Rail Road Company," for the sale and transfer of all the property of this company to such corporation, be, and the same is hereby ratified and confirmed: And that I. R. Moores, present President of this Corporation and George E. Cole, present Secretary thereof, in Consideration of the Covenants and agreements aforesaid, on the part of said "Oregon and California Rail Road Company," to pay all the debts and liabilities of this Company of every name and nature, be, and they are hereby authorized and empowered and directed, for this Corporation and in its corporate name and as its President and Secretary and under its Corporate seal and for the use and benefit of its stockholders, to sell,

assign, transfer, set over, convey and deliver to the said "Oregon and California Rail Road Company," of Portland, Oregon, all the property, real, personal and mixed of whatsoever name and nature, both legal and equitable, absolute and contingent, and all donations, rights, credits, accounts, and interests whatever, now owned by, or in anywise belonging to this corporation, and all franchises and interests whatever by it possessed or owned: and especially to sell, assign, transfer, set over, and convey, in the name of this Corporation, to wit:

The "Oregon Central Rail Road Company," and under its Corporate Seal, unto the said "Oregon and California Rail Road Company," of Portland, Oregon, its successors and assigns, all the lands, right, title, franchise, interest, claim, property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which this corporation the "Oregon Central Rail Road Company," of Salem, Oregon, now has, owns or possesses, or to which it is now of right entitled, either legally or equitably, or to which it may at any time hereafter become entitled, in and to the franchise and grant of lands made by the Congress of the United States to aid in the construction of a Rail Road and Telegraph line, from the Central Pacific Rail Road, in California to Portland, in Oregon, by an act entitled, "An Act granting lands to aid in the Construction of a Rail Road and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon," ap-

proved July 25th, 1866. And amendments thereto. This corporation having been duly designated by the Legislature of Oregon, in pursuance of the requirements of such acts of Congress, with full power and authority to include in such sale, assignment, transfer and conveyance all right, title, and interest of every name and nature, which this corporation now has, or to which it is either legally or equitably entitled, or at any time hereafter may be either in whole or in part, to the ownership, management or control of the lands, franchises and benefits granted or conferred by such act of Congress and amendments thereto.

And Whereas, The present indebtedness of this Company exceeds the sum of Eight Hundred Thousand (800,000) Dollars, in U. S. Gold coin, the whole of which amount, said "Oregon and California Rail Road Company," have assumed and agreed to pay and to forever save, indemnify and keep harmless this company against all liability and damages by reason thereof, in consideration of this transfer and sale to said corporation of all the property and corporate franchises of this Corporation.

And Whereas, It is the judgment of this meeting that the assumption of such indebtedness is a full, complete and adequate consideration for all the property and corporate rights and franchises of this company hereby directed to be transferred and conveyed, and that the best interests of all the stockholders herein are subserved by the cancellation of the said in-

debtedness:

And Whereas, There being no money or property whatever, to appropriate amonk the several stockholders of this company, after the disposal of its property, and the payment of its liabilities as aforesaid, and the business of this company being about to finally suspend:

Therefore Resolved, That the whole Capital Stock of this Corporation, both preferred interest bearing and common stock, be, and the same is hereby cancelled, and the holders thereof are hereby directed to surrender the certificates thereof to the Secretary of this Corporation; and such Secretary is hereby directed to cancel each certificate, by writing in red ink across the face of each thereof, the words:

"Surrendered and cancelled by order of a resolution of the Stockholders": adding thereto, the date, and his name and title of office.

And Resolved, That from and after the date of the delivery of such deed of conveyance, assignment and transfer to the said "Oregon and California Rail Road Company," this corporation, to wit: The "Oregon Central Rail Road Company" of Salem, Oregon, shall be dissolved.

And Whereas, The two million dollars of what is called preferred interest bearing stock heretofore issued by this company and which stands upon the stock book of this company in the following amounts, in the names of the following parties to wit: A. J. Cook, 5,400 shares, representing \$540,000.00; N. P.

Perrine, 100 shares, representing \$10,000.00; Ben Holladay & Co., 14,500 shares, representing \$1,450,000.00 was issued illegally and without any authority of law, and without any consideration whatever and

Whereas, No part of such preferred interest bearing stock has ever yet been paid in.

Therefore Resolved, That all said preferred interest bearing stock is hereby declared void, and cancelled, and the holders of the certificates thereof are hereby requested to surrender the same up to the Secretary of the Board of Directors of this Company to be so marked, cancelled and such Secretary is hereby directed to cancel the samek.

On motion of J. C. Hawthorne, the stockholders' meeting took a recess until 3 o'clock P. M. tomorrow afternoon, March 29, 1870, in order that the record might be made up, and for the transaction of any other business than may come before them.

Geo. E. Cole,

Secretary.

I. R. MOORES,

President.

Office of "Oregon Central Rail Road Company,"
Salem, Oregon, March 29th, 1870, 3 o'clock P. M.

Pursuant to adjournment of the Board of Stockholders on yesterday: The Board met at the office of the Company at Salem, Oregon, March 29th, 1870, at 3 o'clock P. M., present the same stockholders and amount of stock represented as on yesterday: Also the same officers as on yesterday, I. R. Moores, President in the Chair, and Geo. E. Cole, Secretary.

Whereupon, the minutes of the stockholders' meet-

ing of yesterday being read were on motion of J. C. Hawthorne unanimously approved by a vote of all the stock present.

Whereupon, on motion of A. L. Lovejoy the stockholders' meeting adjourned, sine die.

Geo. E. Cole,
Secretary.

I. R. MOORES,
President.

Office of "Oregon Central Rail Road Company,"
Salem, Oregon.

Tuesday, March 29th, 1870, 4 o'Clock P. M.

Pursuant to recess taken by the Board of Directors on yesterday, the Board met at the office of the company at Salem, Oregon, this March 29th, 1870, at 4 o'clock P. M.

Present I. R. Moores, President in the chair and Geo. E. Cole, Secretary—also present the following Directors, to wit: I. R. Moores, John F. Miller, E. N. Cook, J. H. Moores, Asahal Bush, J. H. Foster, Jacob Conser, J. C. Hawthorne, George W. Weidler, A. L. Lovejoy, J. H. Douthitt, and Geo. L. Woods.

The Record of the meeting of the Board on yesterday was read by the Secretary.

Whereupon on motion of J. C. Hawthorne, such record was unanimously approved.

John F. Miller offered the following resolution which on his motion was unanimously adopted:

Resolved, That J. S. Parrish and C. N. Terry, Trustees for the Bondholders in this Company in the Mortgage heretofore issued by this Company be, and they are hereby requested to cancel of Record in

the several counties of this State, the said mortgage heretofore made by this company on its Rail Road, and rolling stock upon the surrender to them for this Company, or to this Company of all the bonds heretofore issued by this Corporation, together with Coupons attached: and

Resolved Further, That upon surrender of any or all such Bonds, to this Company the present Secretary of this Company, shall endorse on each thereof these words in red ink, whereby the same shall be cancelled, to wit:

“Cancelled this day of, A. D., 1870, by order of the Board of Directors passed March 28th, 1870,” and shall sign his name and title of Office thereto. And he shall file such bonds among the archives of this Company.

“Whereupon on motion of Jacob Conser the following resolutions were unanimously adopted.

Whereas, At a Stockholders' meeting of this Company legally called and held at the office of the Company in Salem, Oregon, on the twenty-eighth (28th) day of March, A. D., 1870, which meeting was duly called for such purpose as provided by law, such stockholders by a vote of over two-thirds of the whole capital stock in this company, unanimously adopted resolutions authorizing the dissolution of this Corporation, the settling of its business, disposing of its property, and dividing of its capital stock, which resolutions are spread at length on the record of this company as a part of the proceedings of such stockholders

meeting, reference being thereunto had will more fully appear.

And Whereas, It is the judgment of this Board that the best interests of this Company and of all the stockholders herein, will be subserved by a dissolution of this company, the settlement of its business, and disposition of its Capital Stock in the manner provided in and by the resolutions of the stockholders as aforesaid.

Therefore Resolved, That this Corporation, The "Oregon Central Rail Road Company," of Salem, Oregon, incorporated April 22, 1867, be, and the same is hereby dissolved upon the terms and in the manner as prescribed in the said resolutions of the stockholders aforesaid, and the President and Secretary of this Board are hereby directed to dispose of the property of this Company, and settle its business, and dispose of its stock in the manner provided for in and by said resolutions of the stockholders.

Resolved, That all the proceedings of such stockholders' meeting of March 28th, A. D., 1870, be and the same are hereby endorsed, ratified, and confirmed, and the President and Secretary of this Board be and they are hereby directed to execute all the suggestions and directions of such stockholders' meeting in the name of this Company, as therein set forth.

"Whereupon on Motion of Geo. W. Weidler, the following Resolution was unanimously adopted:"

Resolved, That I. R. Moores, President, and Geo. E. Soles, Secretary of this Company be, and they are

hereby authorized and directed to make, execute and deliver to the "Oregon and California Rail Road Company," of Portland, Oregon, in the name of this Corporation and under its corporate seal and under their signatures as such President and Secretary a good and sufficient Deed of Conveyance of all the property and franchises of this Company of whatever name and nature, real, personal and mixed, and of all its rights, credits and interests whatsoever, in accordance with the contract entered into with such corporation for such sale, assignment, transfer and conveyance, and in accordance with the Resolution of the Stockholders of this Corporation, adopted this 28th day of March, A. D., 1870, affirming such sale and directing such conveyance.

J. H. Moores offered the following resolution which on his motion was unanimously adopted.

Resolved, That the President and Secretary of this Company be and they are hereby instructed to communicate to the Secretary of the Interior, the fact that this company has sold, assigned, transferred, and conveyed to the "Oregon and California Rail Road Company," of Portland, Oregon, all of its right, title and interest, in and to the lands, franchises, and benefits granted to the "Oregon Company by the act of Congress of July 25th, 1866, and amendments thereto, granting lands to aid in the construction of a rail road and a telegraph line from the Central Pacific Rail Road in California to Portland in Oregon.

STATE OF OREGON,

Marion County—ss.

I, S. F. Chadwick, on oath being duly sworn, say that I will faithfully and honestly discharge to the best of my ability the duties of Director of the Oregon Central Rail Road Company. So help me Go.

S. F. CHADWICK.

Subscribed and sworn to before me this 17th day of June, A. D., 1869.

[Notary Seal]

S. A. CLARKE,
Notary Public for Oregon.

(U. S. Revenue Stamp for Five Cents.)

Q. Did you know George E. Cole who purports to have been Secretary of the Oregon Central Railroad Company from the time that S. A. Clark was Secretary as shown on page 136 of exhibit 7 whose signature as secretary of the Oregon Central Railroad Company appears in the minute book, complainant's exhibit 7, from page 136 down to and including page 208?

A. Yes.

Q. Where is he?

A. He is dead.

Q. Do you know whether or not he was secretary of this company, and succeeded S. A. Clark whose name appears signed as secretary to these minutes with that of I. R. Moores, President?

A. I know he was connected with the company,—I do not know what his relation to it was.

Q. He was in the employ of the company during this time I understand you to say?

A. He was.

Q. Do you know his handwriting?

A. I cannot say thit I do.

Q. When did you come to the service of the Oregon and California Railroad Company, if you did come to its service, and in what capacity?

A. In August, 1870, as draftsman, and I remained with the company until September, 1875.

Q. Who was your superior officer?

A. I. R. Moores was my immediate superior.

Q. Did you as draftsman of the Oregon and California Railroad Company have any knowledge of, or any connection with the miscellaneous lands of the company?

A. No sir, my connection with the company was simply as a subordinate in the office.

Q. You had no supervisory control?

A. No.

Q. Did you, or did you not have any knowledge of the tract of land in controversy in this suit?

A. Well, we made duplicate maps of all the land included in the Oregon land grant.

Q. Do you know what land is included in this suit?

A. No, I do not.

Counsel for defendant here states that he wants to all to the objection heretofore made to the offer of exhibit 7, and to the instrument set up in complainant's complaint on the further ground that there is no evidence of the existence of the instrument pleaded

of date March 28, 1780, or of the existence of the original or that the same has ever been lost.

Q. The land in controversy in this suit, Mr. Moores, is a tract of land, consisting of lots 5 and 6 and the east $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 29, and the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of section 32, township 1 south, range 2 east, in Clackamas County, Oregon. The first tract being known as cash entry 641 of J. Grindley and the second tract known as cash entry 693 of Gardner Elliott, or G. Elliott, and being a tract upon which was a saw mill operated by Ben Holladay and Company in 1869, and about two miles or such a matter east of Milwaukie,—and about a mile and a quarter northeast of the railroad track, at its nearest point between Milwaukie and Clackamas station, and there is a controversy now in this suit between the granddaughter of Ben Holladay and the Oregon and California Railroad Company,—do you have any personal recollection of ever having had anything to do with these lands as lands of the Oregon and California Railroad Company?

A. No sir.

Q. Who was your immediate superior?

A. I. R. Moores.

Q. And you continued in the service of the Oregon and California Railroad Company until when?

A. Until September, 1875.

Q. You had no actual physical custody in your employment of the papers and records of the company?

A. No sir.

No Cross Examination.

(Witness excused.)

J. H. HENSELMAN is called as a witness for the complainant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, age, residence, and occupation.

A. J. H. Henselman, age twenty-nine, occupation clerk in the tax and right of way department of the Oregon and California Railroad Company.

Q. How long have you been clerk in the tax and right of way department of the Oregon and California Railroad Company?

A. Alittle better than four years.

Q. I show you complainant's exhibit 6 purporting to be a statement of the assessment valuation of taxes paid on the east $\frac{1}{2}$ of the southeast quarter of section 29, Lots 5 and 6 of Section 29 and the north $\frac{1}{2}$ of the northeast $\frac{1}{2}$ of section 32, township 1 south, range 2 east, of the Willamette Meridian in Clackamas County, Oregon, and will ask you what, if anything, you had to do with the examination and verification and checking up of this statement with the assesment rolls,—the original assessment roll of Clackamas County, in the possession of the County Clerk of said County?

Counsel for the defendant objects to the question as

leading, incompetent, irrelevant, and immaterial, and as not the best evidence.

A. This is a document that I verified myself together with Mr. J. A. Staats, a deputy sheriff on Friday, the 15th. We went through the rolls from the year 1869 to 1910 inclusive, covering the assessment of these lands, wherever they could be found as shown by this document and in addition to that upon yesterday Mr. Hallock, together with the County Clerk Mr. Mulvey went over and checked this same document.

Q. Was it found to be correct as shown?

A. Yes. There was one or two minor matters that Mr. Staats had overlooked. I think in one place we found twenty cents' difference in the amount of taxes, but there was no material change.

Q. This statement is correct, and in accordance with the assessment rolls as you found them?

A. Yes.

Q. What did you have to do with the checking up of the taxes on these lands?

A. Mr. Hallock usually did that.

Q. The witness who testified yesterday?

A. Yes sir.

Cross Examination.

(Questions by Mr. H. W. HOGUE.)

Q. Mr. Henselman where did you find these tax rolls?

A. We found them in two places, one in a room directly off the sheriff's office, and one room in the corner of the building right back of the jail.

Q. In the basement?

A. In the basement, with the exception of the 1910 records.

Q. The building you refer to is the court house at Oregon City, Clackamas County, Oregon?

A. Yes sir.

Q. In what way are these records kept in those rooms?

A. Do you mean as to the position they occupy in the rooms?

Q. Yes.

A. They were very much mixed up, and we tried to get them in their order, but they were pretty well mixed up. There was no apparent order, except within the past fifteen years.

Q. The older tax records were pretty badly mixed up?

A. Yes, they were scattered around a good deal.

Q. What did they consist of, assessment rolls and tax rolls?

A. A good many times it would be assessment rolls, and then it would be the tax rolls kept by the sheriff.

Q. Did you find both assessment rolls and tax rolls?

Counsel for complainant objects to the question for the reason that the only rolls are the assessment rolls provided by law.

A. Well, I found the original book that was made by the assessor many times in which the total valuations were carried out, and then I found a duplicate of that, which I understand is the one that the sheriff used in collecting the taxes.

Q. You found both of those rolls?

A. Yes, but in the assessment rolls there was no payment of taxes noted, that was in the roll kept by the sheriff.

Q. What sort of books are those, are they large or small?

A. They gradually increased in size from very small books until they get to be quite large.

Q. Are they in book form?

Q. Yes, they are all in book form.

Q. The later ones are what sized pages, approximately?

A. About that large (showing) the later records.

Q. About how many inches wide are the pages of the largest books approximately?

A. I do not know, it would be pretty hard to say, some of them, I guess, are three feet, one way or better.

Q. From three feet wide down to small books?

A. Yes, the small books were not more than a foot and a half long by seven inches wide, or fourteen inches wide, when folded open.

Q. Then the small books, I understand, were longer than they were wide?

A. Yes. The small books were about the size of this book, complainant's exhibit 7.

Q. And the later books were wide books,—they were probably wider than they were long?

A. Yes, considerably.

Q. You are familiar with the tax records of Multnomah County and some other counties of this state?

A. Yes, I have been over them,—that it with a few of them.

Q. Did you find these tax rolls which you examined in Clackamas County,—similar to those of Multnomah County, in the matter of style of book and the manner in which it was bound, and the kind of books?

A. I think for the last few years,—four or five years they would be very much like the ones in Multnomah County. I have not examined any of the later years for Multnomah County.

Mr. Fenton, if counsel for defendant insists upon their objections to this paper, complainant's exhibit 6, complainant will take the testimony of the county clerk at Oregon City.

Defendant's counsel insist upon their objection.

Mr. Fenton, I will take the testimony of the County Clerk, at Oregon City.

Q. Mr. Henselman, did not you find in these tax rolls in which the amount of the assessment and the amount of the taxes on this property were shown that this record was kept particularly in later years in books containing a number of different columns,—in one column being the name of the tax payer or the owner of the property, and in another column the description of the land, and another column for the section in which the land was located, and the township and range, and then a column for the number of acres, and a column for the valuation of the land, and a column for the valuation of the improvements of the building, and then a column for the total value of tax-

able property?

A. Yes.

Q. That was the kind of tax rolls that you found?

A. In later years, yes.

Q. In later years that would apply,—for some ten or fifteen years back?

A. I can state back as far as 1902 sure.

Q. Did you make up this statement,—did you write it up yourself, or did Mr. Staats do it?

A. No, I made that out myself.

Q. You made out the original yourself?

A. Mr. Staats wrote out the original,—we took it out in pencil form, and we checked it off, and then I wrote out this from that.

Q. Then you afterwards prepared this from that pencil memorandum in Portland?

A. No, it was prepared in Oregon City before I left, and compared by Mr. Staats.

Q. Using the pencil memorandum?

A. Yes, he read from the pencil memorandum that he had made up, and I checked it off and found it O. K.

Q. In making this memorandum that was made in pencil from which this exhibit was taken,—there were descriptions of this land in those tax rolls for these different years, that you did not write out in your pencil memorandum,—for instance lots 5 and 6, and these quarter sections,—you have found them in these tax rolls?

A. Oh, yes, sure.

Q. You did not write that in your pencil memorandum?

A. We put that at the head, you will see it says statement of taxes on this property, and only in cases where there was an exception,—where we wouldn't find the property listed, we would make a note of that.

Q. But in the tax records themselves for every year, there is a column giving the description of this land, is there not?

A. Yes.

Q. But you did not take that off when you made up this statement?

A. No.

Q. You took off from those original tax rolls only the particular figures that you wanted, or that you thought would be necessary for your purpose?

Counsel for complainant objects to the question on the ground that the tax roll shows the description of the land and the title of this document shows also the description of the land as found in the tax rolls.

A. I made it off just as you see it there. Here is the original draft of that business, and I think that will tell better what we did than if I tried to explain, you can see how it was copied off.

Q. What I want to know is, did you copy the record of the description of the land? Take for instance, the rolls for 1895,—did you copy that description for that year.

A. First we took the assessment rolls, then we turned and found in whose name it was assessed, and we

found in the later years that it was assessed to Ben Holladay and Company, and next we went to the assessment valuation, and the number of acres, and the amount of taxes paid, and the receipt number, the amount paid and the rebate.

Q. Did you find any rebate?

A. Yes, since rebates were allowed, they have only been in existence a few years.

Q. What I am trying to find out is,—you took so much of these tax records as you thought was necessary for your purpose, and the other matters you considered of minor importance, and were omitted?

A. We took it off just as you see it there.

Q. You used your best judgment about it ?

A. We did.

Counsel for defendant further objects to this statement complainant's exhibit 6 for the reason that it is not a true copy of the assessment rolls.

Q. Now, it is really true, Mr. Henselman that this exhibit 6 is not a literal or exact, true, and complete copy of everything in those tax rolls as it relates to this property?

A. We tried to give an exact reproduction of the records of the matters as shown on this statement.

Q. You mean to answer my question by saying yes?

A. I mean to answer your question by saying that I took an exact reproduction of the land that was assessed to the company, and the amount of taxes due, and by whom paid, and the number of the receipt.

Q. And anything that had any bearing on the question?

A. Yes.

Q. But there are many statements on those tax rolls with reference to that property that don't appear in this statement,—or there are some matters on the tax rolls that are not reproduced on this statement?

A. Yes.

Q. In exhibit 6 under the column marked "Taxes Paid by" for the years 1885 to 1910, inclusive, in the line in which 1885 appears, are the initials O. & C. R. R. and in the other lines below that is the word "Ditto,"—I presume this "Ditto" indicates the O. & C. R. R. Company,—now did the initials O. & C. R. R. Company on those line appear in the column on the assessment rolls?

A. There is no name there because the name appears by the name of the owner in the rolls.

Q. Then this column "Taxes paid by O. & C. R. R. Company",—that is not a column that appears in the tax records themselves?

A. No. There is no place that shows who paid the taxes,—they do not make a record of the man that makes the payment on the rolls themselves.

Q. So this initial on this document complainant's exhibit 6 is not a statement of what you found on the original assessment rolls, but is a conclusion as to the person who paid the taxes?

A. I do not think there is any matter of conclusion

about it. I went and found the receipt number, and it shows that the receipt was made out to the Oregon and California Railroad Company, and I showed it that way on the statement.

Q. Is there any other column in this exhibit 6 that you don not find in the original assessment rolls?

A. No, this column "Taxes paid by" is the only column that does not appear in the assessment rolls.

Q. These other columns "The valuation," "Taxes paid," "Assessed to" and "Receipt No." are all columns that are found on those assessment rolls?

A. Yes.

Q. Did you find in every one of these years from 1885 to 1910 that the Oregon and California Railroad Company was designated by the initials O. & C. R. R. Company?

A. Do you mean where the property was assessed,—that it was assessed to the O. & C. R. R. Company, or the Oregon and California Railroad Company.

Q. Yes.

A. On the rolls from the year 1892, it was assessed in the name of Ben Holladay and Company, and then on down some years it might have been O. & C. or it might have been written out Oregon and California Railroad Company.

Q. You did not write it out when you made that document?

A. No.

Q. You abbreviated it?

A. Yes.

Q. In some cases some of those rolls the word company or Co. was not in there, it was just O. & C.?

A. Well, yes, the word company was not in all cases there, it was abbreviated.

Q. Did you find a column "Receipt No." on those assessmen trolls?

A. Yes, under the column marked "Remarks." I do not know whether there was a receipt No. column or not.

Q. In your statement you have it headed "Receipt No."?

A. Well, you may take it that way?

Q. You found a description of the land in each one of these years in which it was assessed at all?

A. Yes.

Q. But the description was not exactly the same for every one of those years as it appears here for the east $\frac{1}{2}$ of the southeast quarter and lots 5 and 6, was that just the same?

A. In some of the older years it was recorded as the fractional southeast $\frac{1}{4}$, and the lots were not segregated.

Q. Now, in those years, did not you in some cases find that the tax records showed that these taxes had been paid by some person other than the Oregon and California Railroad Company?

A. I never did in any case.

Q. Did you have any recollection in your mind now that there were years in which you found no record?

A. What do you mean by that?

Q. For example in the year 1907, do you remember that the tax roll for that year shows the number of the receipt?

A. Yes, and I have put a blank number in where it was not shown.

Q. Do you recollect that receipt number 4975?

A. I think that the receipt number is shown, or a certain number, I do not remember the particular number.

Q. That is the receipt number for that year,—if that is the receipt number, it shows on the assessment roll?

A. Certainly.

Q. And do you remember seeing in that connection a statement that they were paid by the Oregon and California Land Company prior to that year?

A. No, I do not believe the receipts were made to the Oregon and California Land Company at any time. I think when we compiled that statement, we called that off,—or called the years off to Mr. Staats, and he, in turn, went to the receipt book and it was the Oregon and California Railroad Company.

Q. And not the Oregon and California Land Company?

A. No, the Oregon and California Railroad Company. Sometimes it would appear as paid through Mr. Koehler, or some one else, but the payment was in the name of the company in all instances.

Q. Do you remember whether or not in the year

1902, the taxes were paid by R. Koeler?

A. I did not see the receipt.

Q. You did not see the receipt?

A. No.

Q. You do not know whether that is the way it reads upon the receipt?

A. I don not know.

Q. I understand that your knowledge with respect to that was what Mr. Staats read to you, and that your eyes did not see?

A. Yes,—my eyes did not see.

Q. Your eyes did not see?

A. No.

Q. You do not know whether the record shows that the taxes for 1902 were paid by R. Koehler, or the O. & C. R. R. Company, or any one else?

A. No.

Q. You never did know?

A. No.

Q. You cannot really swear, even after examining this exhibit 6 that the tax records of Clackamas County show that the name O. & C. R. R. Company, or the Oregon and California Railroad Company is the person or corporation that paid the taxes for all these years?

A. Of course all I know is from what Mr. Staats read that the receipt was paid by the Oregon and California Railroad Company.

(Witness excused.)

SYDNEY SMITH is called as a witness for the

complainant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, age, residence, and occupation.

A. Sydney Smith, forty-six years old, I reside at 715 Weidler Street, I am a contractor by occupation.

Q. Where did you reside, and what official position did you hold from July, 1890, until July, 1894?

A. I resided in Oregon City, Clackamas County, and was County Surveyor.

Q. Have you ever been on the tract of land described in this record, and as appears in complainant's exhibit 1, being lots 5 and 6, and the east $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 29 and the north half of the northeast quarter of section 32, township 1 south, range 2 east of the Willamette Meridian, in Clackamas County, Oregon, and lying East of the donation land claim of Hector Campbell, and Daniel Hathaway, and the first tract being known as cash entry 641 of J. Grindley, and the second piece as cash entry 693 of G. Elliott, and if so, when were you on these premises as shown in this exhibit, which I now hand you?

A. I was on this land this morning.

Q. Did you make an examination of the ground for corners indicating a survey of this land?

A. I did.

Q. What did you do?

A. I went clear around the tract this morning and refreshed my memory relative to a survey that I made.

Q. What did you find in the way of iron pipes or monuments that had been placed there by a surveyor?

A. I found quite a few of the corners,—iron pipes, but not all of them, that had been placed there under my directions.

Q. When, if you know, was this survey made of that property?

A. I think it was made in May, 1894,—it has been a good many years ago and I would not like to swear to the exact date.

Q. I will ask you to state to the court if you made, or caused to be made that survey, and if so, for whom was it made?

A. Mr. Andrews asked me to make the survey. He was land agent of the Oregon and California Railroad as it was called at that time. I went down,—I had a deputy surveyor, who was working for me by the name of Hoffman, and I went down with him to look over the country, and look over the land, and he made the survey.

Q. That is, you went with your deputy to these premises preliminary to running the lines?

A. Yes. I remember very distinctly of going over the north line of the property,—a part of it,—I cannot say that I went over all of it.

Q. Did you, or did you not, and send in the field

notes, or something of the kind to Mr. Andrews, secretary of the Oregon and California Railroad Company, and acting land agent at that time, of the work that was done by your deputy?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and as not the best evidence.

A. Yes.

Q. Will you describe to the court what this plat or map or field notes, or whatever it was, consisted of?

A. It was just a land plat, showing the location of the iron pipes that had been placed at different corners. It is just what any surveyor would send in when he sent his bill.

Q. Did you also, or not, send the field notes of the survey?

A. Yes sir.

Q. Who paid your bill for this service?

A. The Oregon and California Railroad, or Mr. Andrews, for the company.

Q. Where is your deputy who assisted you in making this survey?

A. I saw him in Portland about two years ago, but since he left my employ I have not done any surveying,—for probably fifteen years, and after he left my employ he went over to Baker City, and he was surveying there for Mr. Foster.

Q. You do not know whether he is at Baker City or not?

A. I have no idea where he is,—I have not seen him and I have only heard of him two or three times.

Q. Will you state, if you recollect, the amount of your bill, that was paid by the Oregon and California Railroad Company?

A. No, I cannot.

Q. Have you any recollection of it?

A. I have not the remotest recollection.

Q. But whatever it was, it was paid by the Oregon and California Railroad Company?

A. Yes.

Q. I will ask you to state to the court, what you know, if anything about any indications of a foundation of an old saw mill on the premises, and when you saw them, and where, with reference to this property,—I show you complainant's exhibit 2, which purports to show a tracing of the exterior boundary lines of both of these tracts, and which purports to show the location or site of an old saw mill on the south 80 of this land?

A. I remember very distinctly indications of an old saw mill when I was there,—that is, timbers and things of that kind.

Q. That was in May, 1894?

A. Yes sir. And I also saw this morning the old timbers of the run way or roll way on the land.

Q. Have you some knowledge of mill structures or foundation timbers of buildings that would enable you to recognize them as the remains of an old mill?

A. Yes sir, there is no question about it.

Q. You have had experience in matters of that kind, have you?

A. Yes sir.

Q. Where, with reference to that land,—plaintiff's exhibit 2, was that old mill?

A. It shows it on the plat, and I should judge it was approximately correct.

Q. Do you recall, Mr. Smith, or did you pay any attention to any old fences on these lands in 1894, when you were there with your deputy, making this survey,—and if you did, what recollection have you about there being some old fences?

A. Well, there was a fence on the north line,—an old fence there. It is pretty hard just to recollect all of them. I know it was partially fenced, but as to all, I cannot say.

Q. These premises were partially fenced at that time?

A. Yes.

Q. Do you recall what kind of an old fence this was that you saw?

A. It was an old worm fence on the north,—that was on the east, and on the north, as I recollect it, it was just an ordinary post fence,—cedar posts.

Q. How was it fenced on the south, do you recollect?

A. My recollection of the south is that there was not anything to speak of, I remember the old mill in there and going over the premises.

Q. The north and east you recollect very well?

A. Yes.

Q. Now what appearance, if any, did the premises have in 1894 of having been burned over?

A. Well, it was logged off land,—what we call logged off land at that time, but I do not recollect it at that time.

Q. You were out there this morning, were you not?

A. Yes sir, I was.

Q. You went out there at my request.

A. Yes.

Q. Did you notice the character of the burn and the character of the big stumps on this land at the present time?

A. Yes sir.

Q. What is the fact, in that respect, as to these stumps and their size as indicating the size of the timber that was formerly on these lands?

A. It was heavily timbered.

Q. And what indications, if any, was there of a burn?

A. Well, it had been burned over,—but then all these logged off lands or brush lands have been burned over, about the same.

Q. Are you able to state with any degree of accuracy, or give an opinion as to how long these lands have been logged off, or could you say?

A. Oh, it has been a long time, you could tell by the stumps,—I was over it this morning, and I was over it seventeen years ago.

Q. In 1894,—at that time, what appearance had it as to the age or period of time that had elapsed since the lands were logged off?

A. It had been quite a while before then.

Q. What was the customary practice at that time as to the use of iron pipes for monuments or corners to surveys made during your administration and how did that compare with previous surveyors, and so forth?

A. As far as my knowledge goes, prior to my holding office there in Oregon City, or in Clackamas County, they used stone and stakes, and I have found in my experience that it was more convenient to use iron pipe for corners, and I introduced that practice of putting them in in place of wood, and we used iron pipes and for accurate work we put in a wood block, and then put in a tack.

Q. What was the size of these iron pipes that you used to mark these corners?

A. About an inch and a quarter pipe.

Q. Was it ordinary pipe?

A. Water pipe or gas pipe.

Q. I will ask you to state whether or not these pipes in making that survey were put at all the corners, and reentrant angles, or what is the fact as to that?

A. Yes. I think we placed them at all of the corners but this morning we were not able to find all of them.

Q. I call your attention to what appears to be a

section line road between the Elliott tract and the Grindley tract, and will ask you how long that section line road has been there to your knowledge, or have you any knowledge on that subject?

A. Well, the road that skirts along the side of the hill to the west of the tract,—the wagon road used to come along down in here, (showing on plat).

Q. To the west of the eighty?

A. To the west, yes. I saw an old, abandoned road there this morning.

Q. There was a road on the east boundary line, was not there?

A. Yes sir.

Q. That was the old road to Oregon City?

A. Yes.

Q. And this diagonal road leading off from the corner of the eighty went on down towards the railroad track, that was there then?

A. Yes.

Q. But the road across between the two tracts on the section line, was not opened at the time you were there?

A. I have no recollection of seeing it at all.

Q. You do not know when it was opened?

A. I do not.

Cross Examination.

(Question by Mr. HENRY CONLIN.)

Q. Mr. Smith, the north boundary was the one that you remember seeing the fence on particularly?

A. Yes.

Q. But you are not sure that it ran all the way across the north boundary?

A. I am pretty positive.

Q. You think it did?

A. I think it did.

Q. And on the east boundary only a part of the east boundary line was fenced at that time?

A. Well, I would not like to say to be definite after this length of time. It has been seventeen years ago. I wouldn't like to say definitely whether it was fenced or not, it was not impressed on my mind enough for me to say. I went out this morning to refresh my memory. I can remember going over the land very distinctly on my first visit to the premises, and I did some work out there, and I went over it again. I did quite a little work for a gentleman out there by the name of Kinney.

Q. You did not have to do this work you refer to to remember about the fences?

A. I had to pass there, right close to do it.

Q. Which line?

A. The north line.

Q. You said that the land was partially fenced?

A. Yes.

Q. And you think there was a fence probably all the way across the north line?

A. Yes.

Q. And you cannot say that there was a fence the entire length of the east line in 1894?

A. No.

Q. You think there was no fence on the south line?

A. No, I cannot say that I would swear that there was a fence on the south line at that time. I remember the north fence, and I remember the east,—I remember that there was a county road there on the east, and a diagonal county road, but I cannot remember that section line road going through the place.

Q. The location of the saw mill as you remember it was not far from the south boundary line?

A. Not a great distance.

Q. You do not remember any fence on the west boundary line?

A. No sir, I do not.

Redirect Examination.

(Questions by Mr. W. D. FENTON.)

Q. There might have been a fence on the west?

A. Yes, there might have been.

Q. And there might have been a fence on the south boundary?

A. There might have been.

(Witness excused.)

L. F. STEEL is called as a witness for the complainant, and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. W. D. FENTON.)

Q. State your name, age, residence, and occupation.

A. L. F. Steel, age forty, residence, Portland, Oregon,—Assistant to Mr. Cotton.

Q. Assistant Secretary of the Oregon and California Railroad Company?

A. Assistant to Mr. Cotton who is secretary.

Q. Who is secretary of the Oregon and California Railroad Company at the present time?

A. W. W. Cotton.

Q. Can you tell how long it is since you went into the service of Mr. Cotton, and does Mr. Cotton have the custody of the records, and did you have the custody of the records under him, of the Oregon and California Railroad company?

A. The records of the corporation in Mr. Cotton's charge have only been in my hands since about May, 1910.

Q. Before that time were you familiar with the custody of the records of the Oregon and California Railroad Company?

A. I have been since 1905.

Q. What time in 1905 did you go into the employ of Mr. Cotton, or of the Oregon and California Railroad Company?

A. I think in May.

Q. May, 1905?

A. Yes sir.

Q. I show you complainant's exhibit 7, purporting to be the minute book of the Oregon and California Railroad Company at Salem, containing the minutes of that company from its organization on the 22nd

day of April, 1867, down to and including the meeting of March 29, 1870, and I will ask you from whose custody this book was produced here in Court?

A. Well, do you mean from the records of our office?

Q. I mean from whose custody,—who was the custodian of this book?

A. I am the custodian.

Q. For whom are you having the custody of this book?

A. For Mr. Cotton.

Q. Then if I understand you, Mr. Cotton, is secretary, of the Oregon and California Railroad Company and has the official custody of its records?

A. Yes sir.

Q. Were you detailed by Mr. Cotton to produce the records in his custody for this hearing?

A. Yes sir.

Q. Are you able to say that that is one of the records which was in the custody, and which was received by him from his predecessor?

A. Yes.

Q. Who was his predecessor?

A. Mr. Andrews.

Q. George H. Andrews?

A. Yes.

Q. Do you recall, or do you know from any records or personal knowledge when Mr. Andrews resigned as Secretary of the Oregon and California Railroad Company?

A. I have never looked it up,—the records will show.

Q. The records of the Oregon and California Railroad Company will show?

A. Yes.

Q. I wish you would look at the records showing the date when Mr. Andrews resigned, and when Mr. Cotton was elected Secretary of the Oregon and California Railroad Company, and bring the minute book containing that entry?

A. I will.

It is agreed between counsels for the respective parties herein that W. W. Cotton was elected secretary of the Oregon and California Railroad Company by the board of directors of that company on the day of 1904, and that he succeeded George H. Andrews as such secretary on his resignation on the day of 1904.

Counsel for complainant now reoffers in evidence the minute book of the Oregon Central Railroad Company, being complainant's exhibit No. 7, heretofore offered and received in evidence, as one of the books received by W. W. Cotton, Secretary of the Oregon and California Railroad Company from his predecessor, George H. Andrews, secretary of the Oregon and California Railroad Company, the same having already been received and filed in evidence, and spread upon the records herein as complainant's exhibit No. 7.

Q. I show you a book endorsed on the back "O.

& C. R. R. Co., secretary, record deeds, contracts, agreements, &c." which apparently contains a list or abstract of the record of deeds, contracts, agreements, and so forth of the Oregon and California Railroad Company, and the proper columns and the number of the instrument, and when the same was dated, and the party of the first part, and the party of the second part, and a synopsis of the instrument, consideration and remarks, which document is indexed from A to Z, both inclusive, and which for the purposes of identification may be marked complainant's exhibit 8, and I will ask you if that is one of the books received by Mr. Cotton from Mr. Andrews, and in the custody of Mr. Cotton, as Secretary of the Oregon and California Railroad Company?

A. It is.

Q. Are you familiar with the hand writing of George H. Andrews from your inspection of the records and documents containing his signature?

A. Yes sir.

Q. I call your attention to these entries on page 53 of this complainant's exhibit 8, No. 31, date October 5, 1869, party of the first part, Gardner Elliott and Wife,—party of the second part, Ben Holladay and Company—synopsis of instrument,—warranty deed of or "Ditto" of certain land in Clackamas County,—consideration \$200.00,—and I will ask you in whose handwriting that entry is?

A. I do not believe I recognize that writing.

Q. Do you know the handwriting of F. G. Ewald?

A. No.

Q. You are not able to say whether that is in the handwriting of Mr. Ewald or not?

A. No sir.

Q. I show you this entry on page 79 of complainant's exhibit 8, No. 8,—date November 19th, 1868,—party of the first part, James Grindley,—party of the second part Ben Holladay and Company,—synopsis of instrument,—bill of sale of fir trees and so forth on certain land in Clackamas County—consideration \$20.62—No. 26, date May 4th, 1869, "Ditto" and wife, under the head of James Grindley and "Ditto" under the head of Ben Holladay and Company,—synopsis of instrument, warranty deed. property conveyed 149.90 acres in Clackamas County, consideration \$189.30, and under the heading of remarks,—"Signed only by James Grindley."

No. 27, date August 5, 1869, party of the first part, "Ditto", meaning James Grindley,—party of the second part, United States patent, property conveyed, 149.90 acres "Ditto", land in Clackamas County,—are you familiar with, and do you know the handwriting contained in either of these entries?

A. I do not.

Q. I will ask you to state whether or not that is the same handwriting that is found on page 153?

A. It appears to be.

Q. Now, what became of these instruments if you know, referred to in this document, and have you the receipt of Charles W. Eberlein, acting land agent of

the Oregon and California Railroad Company for these documents?

Counsel for defendant objects to the question as incompetent, irrelevant, and immaterial, and not the best evidence, and as leading.

A. Yes. We have several receipts from Mr. Eberlein showing a lot of these old papers of the Oregon and California Railroad Company that were sent to him.

Q. Who was Charles W. Eberlein?

A. Acting land agent of the Oregon and California Railroad Company.

Q. Where was his office?

A. In San Francisco, California.

Q. About when, if you recollect, were these records transmitted to Mr. Eberlein?

A. My recollection is during or about the year 1904.

Q. By whom were they transmitted as appears from your examination of the records and books in your custody?

A. Apparently some were sent by or from Mr. Andrews' office, and some were sent, I think, possibly by me, that is, after the papers came into Mr. Cotton's hands.

Q. Do you know the handwriting of Mr. Eberlein when you see it?

A. I am familiar with his signature from what I have seen of documents, which were said to be his signature.

Q. I call your attention to a document which for the purpose of identification may be marked complainant's exhibit 9 of date Portland, Oregon August 23d, 1905,

addressed to Mr. W. W. Cotton, secretary of the O. & C. Railroad Company, Portland Oregon,—Dear Sir, Hereby I acknowledge receipt of the following described deeds, documents, and other papers taken by me from the secretary's files in the vault at the Union Depot, and on page 16 this receipt or letter purports to be signed by Charles W. Eberlein, and on page 2, there is this entry, under the caption as indicated, "No. 26," and under the caption "Documents," "Ditto," "Bill of Sale," and under column "Party of the first part," James Grindley and wife, and under column "Party of the second part," Ben Holladay and Company, and under the heading, "Synopsis of instrument" are the words "Conveying east $\frac{1}{2}$ of southeast $\frac{1}{4}$, and lots 5 and 6, section 29 T. 1 S. R. 2 E. 149.90 acres in Clackamas County"

Also "No. 27," under the column "Document," "Warranty deed," under column "Party of the first part," United States, under column "Party of the second part," James Grindley.

Also "No. 31," under the column "Document," it is the character "Ditto" indicating "Warranty Deed," under the column "Party of the first part," G. Elliott and wife, under column "Party of the second part," Ben Holladay and Company,—under column "Synopsis of instrument" the words "conveying north half of north-east quarter section 32 T. 1 S. R. 2 E.," and I will ask you if these entries, which I have read into the record appear in this document, complainant's exhibit 9, over the proper signature of Charles W. Eberlein?

Counsel for defendant objects to the question as leading, and not the best evidence, and also objects to complainant's counsel, reading the document into the record, as incompetent, irrelevant, and immaterial, and not the best evidence.

A. They do.

Q. I call your attention to the purported signature of Charles W. Eberlein on page 16, and will ask you whether or not that is his signature?

A. That is his signature.

Q. Are you familiar with his handwriting?

A. Well, somewhat familiar with it, but I am more familiar with his signature.

Q. You are familiar with his signature?

A. Yes.

Counsel for complainant offers in evidence this document, and the entries read as complainant's exhibit No. 9, and ask leave to have a copy thereof spread upon the records, and to withdraw the original from the files with the understanding that if desired by either party, the original will be produced at the hearing of this case for the inspection of counsel and the court.

Counsel for the defendant objects to the same as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid.

The document referred to is received and filed in evidence, and by consent of the parties the same is spread upon the records as complainant's exhibit 9, and the original is withdrawn. The same is in words and figures as followes, to-wit:

"Portland, Oregon, Aug. 23. 1905.

Mr. W. W. Cotton, Sec'y

Of the O. & C. Railroad Company,

Portland, Oregon.

Dear Sir:

I hereby acknowledge receipt of the following described deeds, documents and other papers taken by me from the Secretary's files in the vault at the Union Depot.

No.	Document.	Party of the		Synopsis of Instrument.
		First Part	Second part	
1—	Bond, Stephen Coffin, O. C. R. R.			Bond for Donation of Block 292 Coffin's Add. to Portland, and 80 acres Multnomah County.
2—	Deed, Hyer Jackson, O. C. R. R.			Conveying East $\frac{1}{2}$ of their Donation Claim No. 6455, 160 acres in Washington County.
3—	Deed, L. Patterson and wife, O. C. R. R.			Conveying E $\frac{1}{2}$ Block adjoining Hillsboro.
4—	Deed, J. R. Boyce, O. C. R. R.			Conveying Lot 5, Block 18, Hillsboro.
5—	Deed, D. L. Turpin, et al, O. C. R. R.			Conveying lands in Sec. 36, T 1 N, R 3 W, Yamhill County.
6—	Deed, Sylvanus M. Nye, O. C. R. R.			Conveying SE $\frac{1}{4}$ Sec. 30, T 1 S, R 1 W, Washington County.
10—	Deed, Chas. McKinney, O. C. R. R.			Conveying W part of NW $\frac{1}{4}$ Sec. 24, T 1 N, R 3 W, 100 acres, Washington County.
12—	Deed, John Harrison, O. C. R. R.			Conveying 48 acres, Sec. 27, T 2 N, R 3 W, Washington County.
13—	Deed, A. C. Brown and wife, O. C. R. R.			Conveying 160 acres in Washington County.
14—	Deed, C. A. Westfall and wife, O. C. R. R.			Conveying N $\frac{1}{2}$ of NE $\frac{1}{4}$ Sec. 8, T 3 S, R 1 W, 80 acres, Clackamas County.
15—	Deed, Kenyon Crandall and wife O. C. R. R.			Conveying 44 acres in Washington County.
16—	Deed, N. Martin and wife, O. C. R. R.			Lot 4, Block 31, Forest Grove, Washington Co.
17—	Deed, Thos Standley, O. C. R. R.			Conveying 200 acres in Yamhill County.

No.	Document.	Party of the First Part	Party of the Second part	Synopsis of Instrument.
18—	Deed, G. W. Ebbert and wife	O. C. R. R.	Conveying 132-55.100 acres in Washington County.	
19—	Deed, J. M. Johns and wife,	O. C. R. R.	Conveying 155 - 26.100 acres in Yamhill Coun- ty.	
20—	Deed, Oregon Iron Works,	O. C. R. R.	Conveying Water Front in East Portland.	
21—	Thomas Hart and wife,	O. C. R. R.	Conveying 8 Lots in Block 10, Hillsboro (All.)	
22—	Deed, Joshua Welch and wife,	O. C. R. R.	Conveying Blocks in Beaverton.	
23—	Deed, Chas Conklin and wife,	O. C. R. R.	Conveying 320 acres in Washington County.	
24—	Deed, G. H. Smith and wife,	O. C. R. R.	Conveying 87 acres in Washington County.	
25—	Deed, Thos. Stewart and wife,	O. C. R. R.	Conveying 10-67.100 acres in Washington Coun- ty.	
26—	Deed, Jas. Grindley and wife, Ben Holladay & Co.		Conveying E½ of SE¼ and Lots 5 and 6, Sec. 29, T 1 S, R 2 E. 149- 91.100 acres in Clacka- mas County.	
27—	Patent, U. S. of A.,	Jas. Grindley.		
28—	Deed, Chas. McKinney and wife,	O. C. R. R.	Conveying 100 acres Washington Co. (same as No. 10.)	
29—	Deed, P. A. Marquam and wife,	O. C. R. R.	Conveying 160 acres in Multnomah County.	
30—	Deed, Robert Walker and wife,	O. C. R. R.	Conveying 50 acres, Sec. 6, T 1 N, R 3 W, Wash- ington County.	
31—	Deed, G. Elliott and wife, Ben Holladay and Co.		Conveying N ½ of NE ¼ Sec. 32, T 1 S, R 2 E.	
32—	Deed, A. F. Hedges and wife, G. W. Weidler,		Conveying ¼ acre Right of Way Canemah, Clack- amas County.	

No.	Document.		Synopsis of Instrument.
	First Part	Second part	
33—	Deed, Canemah Lumbering Co., G. W. Wiedler,	Conveying their property in Clackamas Co.	
34—	Power of Atty., B. Holladay & Co., G. W. Weidler,		
35—	Power Atty., Gideon Tibbetts and wife. B. Holladay & Co.,	Conveying 4 acres Right of Way, Multnomah County.	
40—	Copy of Resolutions, Willamette University, O. & C. R. R.	Agreeing to convey lands in Salem.	
42—	Deed, Philander Lee and wife, G. W. Weidler,	Conveying 111 acres in Clackamas County.	
43—	Deed, Jos. Knight and wife, G. W. Weidler,	Conveying 180 acres in Clackamas County.	
47—	Deed, Sam Heiple and wife O.&C.R.R.	Conveying land in East Portland.	
48—	Deed, S. W. Eddy, E. Ross and wife, G. W. Weidler,	Conveying 11-21.100 acres in Clackamas County.	
49—	Deed, P. K. Murphy and wife, G. W. Weidler,	Conveying 10 acres Sec. 26, T 5 S, R 2 W, Mar- ion County.	
50—	Assignment, Jacob Wheeler, G. W. Weidler,	Transfer of Subscriptions account Donation.	
51—	Resolutions, Jefferson Inst., O. & C. R. R.	Vacating Street Depot Jefferson.	
53—	Deed, J. W. Thornbury and wife, O. & C. R. R.	Conveying 1-05.100 acres, Sec. 26, T 5, S, R 2 W, Marion County.	
55—	Deed, J. W. Thornbury and wife, G. W. Weidler,	Conveying 38-95.100 acres in Sec. 26, T 5 S, R 2 W, Marion County.	
57—	Deed, Sam Brown & wife, O.&C.R.R.	Conveying right of way Sec. 26, T 55, R 2 W, Marion County.	
58—	Deed, G. W. Weidler, O. & C. R. R.	Conveying lands in Whee- ler's Add'n East Port- land.	
59—	Copy Power Atty., B. Holladay, J. H. Foster,		

No.	Document.	Party of the First Part	Party of the Second part	Synopsis of Instrument.
60—	Copy Power Atty.,	O. Pickard and wife, G. W. Weidler,		Conveying 100 acres Sec. 33, T 9 S, R 2 E. Mar- ion County.
61—	Proposition,	A. Hackleman, B. Holladay,		Albany Subsidy.
62—	Bond,	A. Hackleman,	B. Holladay,	Bond for a Deed.
63—	Deed,	G. W. Weidler,	O. & C. R. R.	Conveying lands in Sec. 33, T 9 S, R 2 W, Mar- ion County.
63—	Deed,	G. W. Weidler,	O. & C. R. R.	Conveying Block 31, East Portland.
69—	Deed,	G. W. Weidler,	O. & C. R. R.	Conveying Depot Grounds in Marion County.
70—	Deed,	Jno Meeker and wife,	O.&C.R.R.	Conveying 3-06.100 acres Secs. 15 and 16, T 10 S, R 3 W, in Linn Coun- ty.
71—	Deed,	L. Brooks and wife, G.W. Weidler,		Conveying 10 acres in Marion Co.
72—	Deed,	G. W. Weidler,	O. & C. R. R.	Conveying 4-5.10 acres in Marion County.
73—	Deed,	Jacob Conser et al,	O. & C. R. R.	Conveying Depot Grounds at Jefferson.
75—	Deed,	A. Hackleman,	O. & C. R. R.	Conveying lands in Hack- leman's Second Add'n to Albany.
76—	Deed,	A. Hackleman, Ben	Holladay,	Conveying Blocks in Hackleman's Sec. Add'n to Albany.
77—	Deed,	H. L. Turner and wife	O.&C.R.R.	Conveying lands in Mar- ion Co.
79—	Deed,	H. L. Turner and wife, G. W. Weidler,		Conveying Lots and Blocks in Turner, Mar- ion Co.
81—	Deed,	Chas Hubbard and wife, O. & C. R. R.		Conveying lands in town of Hubbard, Marion Co.
82—	Deed,	Chas. Hubbard and wife G. W. Weidler,		Conveying lands in the Town of Hubbard, Mar- ion County.

No.	Document.	Party of the		Synopsis of Instrument.
		First Part	Second part	
84—	Deed, Jenny Depourtalles Gargier and husband, O. & C. R. R.		Conveying Blocks in Stephen's Add'n to East Portland.	
85—	Deed, Jacob Conser and wife, B. Holladay,		Conveying Blocks in Jefferson.	
86—	Deed, S. W. Hays et al., O. & C. R. R.		Conveying lands in Sec. 1, T 14 S, R 4 W, and Sec. 6, T 14, S, R, 3 W, in Halsey, Linn County.	
87—	Power of Atty., B. Holladay		W. L. Halsey,	
89—	Deed, Jno. Burnett, B. Holladay,		Conveying Blocks in town of Jefferson.	
90—	Deed, A. D. Portalles, Gargier and wife, O. & C. R.R.		Conveying Blocks 29 and 34 in East Portland.	
91—	Deed, B. Holladay, Jr., O. & C. R. R.		Conveying Blocks 28, 30, 33 and 35 East Portland.	
92—	Deed, G. W. Weidler, O. & C. R. R.		Conveying Blocks East Portland.	
93—	Deed, J. H. Settlemier and wife, O. & C. R. R.		Conveying lands in Sec. 18, T 5, S R 1 W, Marion County.	
95—	Deed, Jno. D. Love and wife, O. & C. R. R.		Conveying 2-4.10 acres in Sec. 10 T 15, S, R 4 W, in Linn County.	
96—	Deed, Perry Hyde and wife O.&C.R.R.		Conveying 4-3.10 acres in Sections 9 and 10, T 15 S, R 4 W, Linn County.	
98—	Deed, J. B. Underwood and wife, Jas. G. Hughes,		Conveying lands in Lane County.	
97—	Deed, A. L. Packard and wife, Jas. G. Hughes,		Conveying lands in Lane County.	
99—	Deed, W. H. O'dell and wife, Jas. G. Hughes,		Conveying lands in Eugene City.	
100—	Deed, Z. S. Derrick and wife, Jas. G. Hughes,		Conveying lands in Eugene City.	

No.	Document.	Party of the First Part	Party of the Second part	Synopsis of Instrument.
101—	Deed, L. C. Burkhart, O. & C. R. R.			Conveying 5 acres Donation Claim No. 30, Linn County.
102—	Deed, Jno. Maxwell, O. & C. R. R.			Conveying Gravel Pit Right of Way, Lane Co
103—	Deed, Jas. Robinette and wife, O. & C. R. R.			Conveying Depot Ground Creswell, Lane County
104—	Deed, Alvin Hughes, O. & C. R. R.			Conveying Depot Grounds at Creswell, Lane County.
105—	Deed, H. G. Hadley, O. & C. R. R.			Conveying N $\frac{1}{4}$ of SW $\frac{1}{4}$ and S $\frac{1}{2}$ of NW $\frac{1}{4}$ Sec. 27, T 18, S, R 5 W, Lane Co.
105—(A)	H. G. Hadley, O. & C. R. R.			Conveying N $\frac{1}{2}$ of SW $\frac{1}{4}$ and S $\frac{1}{2}$ of NW $\frac{1}{4}$ Sec. 27, T 18 S, R 5 W, Lane Co.
106—(A)	Jos. Sommerville and wife, W. L. Halsey, Trustee.			Conveying lands in Sec. 35, T 15 S, R 4 W, Linn County.
107—	Copy of Agreement, J. H. Settlement and wife, B. Brown,			
108—	Deed, A. Sommerville and wife, W. L. Halsey, Trustee,			Conveying N $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 16, T 15 S, R 4 W, Lane Country.
109—	Deed, A. D. Hyland, W. L. Halsey, Trustee.			Conveying Lands in Lane County.
110—	Lease, O.C.R.R., P. W. H. and Dock Co., O. C. R. R.			
111—	Agreement, P. W. H. and Dock Co.			
112—	Deed, G. W. Weidler, O. C. R. R.			Conveying Blocks in Couch's Add'n to Portland.
113—	Deed, O. R. Bean and wife, W. L. Halsey,			Conveying 18 acres in Sec. 10, T 16 S, R 4 W, Lane County.
114—	Deed, Jno. Curtis and wife, W. L. Halsey, Trustee,			Conveying 11 acres in Sec. 15 and 22, T 15 S, R 4 W, in Linn County.

No.	Document.	Party of the	Party of the	Synopsis of Instrument.
		First Part	Second part	
115—	Deed, Thos. Monteith, O. & C. R. R.			Conveying Depot Grounds i 4 Albany.
117—	Deed, L. Fleischner, W. L. Halsey, Trustee.			Conveying Lots 1 and 2, Block 7, Harrisburg.
118—	Assignment, B. Holladay, O. & C. R. R.			Eugene and Harrisburg Subsidies.
119—	Guarantee, Sundry parties, O. & C. R. R.			Right of Way Roseburg.
120—	Deed—S. O. Martin and wife, O. & C. R. R.			Conveying land in Sec. 14, T. 19 S, R 3 W, Lane County.
121—	Memo of Deed, W. R. Barnett and wife, O. & C. R. R.			
122—	Deed, J. S. Swearingen and wife, W. L. Halsey, Trustee.			Conveying lands in Sec. 18 T 15 S, R 4 W, Lane County.
123—	Copy of Deed, G. W. Weidler, M. E. Church,			Conveying land in Clack- amas County.
124—	Deed, Alvin Hughes, O. & C. R. R.			Conveying land in Sec. 14, T 19 S, R 3 W, Lane Co.
126—	Deed, A. F. Brown, O. & C. R. R.			Conveying Block 1, Oak- land, Douglas Co.
127—	Deed, J. W. Brasfield and wife, W. L. Halsey, Trustee,			Conveying Lots 1, 2, 3, Sec. 3, T 16 S, R 4 W, Linn County.
128—	Deed, Perry Hyde and wife, W. L. Halsey, Trustee,			Lands in Sec. 34, T 15 S, R 4 W, and Sec. 3, T 16 S R 4 W, Lane Co.
129—	Deed, Enoch Hoult, W. L. Halsey, , Trustee,			Conveying 100 acres T 15 S, R 4 W, Linn County.
130—	Lease, Robt. Cochran, O. & C. R. R.			Lease of Spring.
130—	Lease, Hiram Smith and wife, W. L. Halsey, Trustee,			Lots 4, Sec. 11, and Lots 1, 2, 8, Sec. 10, T 16 S, R 4 W, Lane Co.
133—	Deed, S. Clifford, W. L. Halsey,			Conveying SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 7, T 20, S, R, 5 W and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 12, T 20 S, R 6 W, Lane County.

No.	Document.	Party of the First Part	Party of the Second part	Synopsis of Instrument.
134—	Deed, R. L. Forbes, W. L. Halsey,			Conveying Lot 8, Block 1, Thorn's 2nd Add'n to Eugene.
135—	Deed, Norris Humphrey, W. L. Halsey			Conveying Donation Claim of Alex. Wood, Lane County.
136—	Deed, Jas. L. Brading, W. L. Halsey,			Conveying S½ of S ½ of NE¼ Sec. 2, T 19 S, R 4 W, Lane County.
137—	Deed, J. R. D. Lee, O. & C. R. R.			Conveying Sundry Lands Douglas County.
138—	Deed, Jess Cox and wife,			Conveying NE¼ of NE W. L. Halsey, ¼ Sec. 16, T 18 S, R 3 W, Lane County.
139—	Deed, Jos. W. Mahon and wife,			Conveying 20 acres in Sec. W. L. Halsey, Trustee, 32, T 15 S, R 5 W, Lane County.
140—	Deed, A. J. Chapman, O. & C. R. R.			Conveying lands in Doug- las County.
141—	Deed, G. Humphrey and wife,			Conveying NE ¼ Sec. 33, O. & C. R. R. T 17 S, R 6 W, Lane Co.
143—	Bond, T. G. Hendricks et al,			Right of Way Harrisburg. O. & C. R. R.
146—	Deed, A. J. Jumwalt, O. & C. R. R.			Conveying Right of Way Lane County.
147—	Deed, A. J. Jumwalt, O. & C. R. R.			Conveying Right of Way Lane County.
148—	Power of Atty., B. Holladay,			Conveying Right of Way G. W. Weidler, Lane County.
155—	Deed, A. Hackleman and wife,			Conveying Right of Way B. Holladay, in Albany.
156—	Deed, I. R. W. Selwood, O. & C. R. R.			Conveying lands in Sec. 35, 36, T 1 S, R 1 E, Clackamas County.
158—	Assignment, B. Holladay, O. & C. R. R.			Assigning Subscription.
166—	Deed, May Kaminsky, G. W. Weidler,			Conveying lands in town of Gervais.

No.	Document.		Synopsis of Instrument.
	First Part	Second Part	
168—	Deed, J. J. A. Turner et al, G. W. Weidler,	Conveying Block 16 in Town of Turner.	
172—	Deed, G. W. Weidler, O. & C. R. R.	Conveying lands in Clackamas County.	
175—	Deed, Jas. Luper et al, O. & C. R. R.	Conveying lands to Lane County.	
188—	Deed, Willamette R. E. Company, O. & C. R. R.	Conveying lands in Lane and Douglas Counties.	
191—	Deed, P. W. H. and Dock Co., O. & C. R. R.	Conveying Block 21 etc., City of Portland.	
195—	Deed, G. W. Weidler, O. & C. R. R.	Conveying lots and blocks in East Portland.	
196—	Deed, Jacob Conser and wife, O. & C. R. R.	Conveying Lots and Blocks in town of Jefferson.	
199—	Copy Decree, O.&C.R.R. vs. J. G. Hughes,	Depot Grounds Junction.	
202—	Copy Decree, O. & C. R. R. vs. J. G. Hughes,	Douglas County.	
206—	Indenture, P. W. H. and Dock Company, O. & C. R. R.		
207—	Indenture, P. W. H. and Dock Company, O. S. S. Co.		
208—	Copy Deed, Chas. Hubbard, O. & C. R. R.	Conveying lands at Hubbard.	
223—	Deed, Jacob Brown and wife, O. & C. R. R.	Conveying Right of Way Clackamas County.	
224—	Deed, Wm. Barlow and wife, O. & C. R. R.	Conveying Right of Way Clackamas County.	
228—	Deed, J. J. Comstock and wife, R. Koehler,	Conveying all Sec. 16, and SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 9, T 21 'S, R 4 W, Douglas County.	
236—	Deed, Jas. G. Hughes, O. & C. R. R.	Conveying Depot Grounds Junction.	
248—	Release,	Aaron Rose, Release of Mts. Douglas County.	

No.	Document.	Party of the Party of the Synopsis of Instrument.	
		First Part	Second Part
264—	Deed, Jas. H. Frush, O. & C. R. R.		Conveying Lots 6 and 7, Block 6, Frisj's Square.
267—	Deed, S. A. Tucker, Western Or. R. R. Co.		Conveying lands in Yam- hill County.
268—	Deed, Jeremiah Roland, Western Or. R. R. Co.		Conveying Lots in Mc- Minnville.
269—	Deed, Geo. Olds and wife, Western Or. R. R. Co.		Conveying Lots in Mc- Minnville.
270—	Deed, Wm. Gray and wife, O. & C. R. R.		Conveying Lots 6 and 7, Block 6 Frushi's Square.
274—	Deed, F. N. Blanchette, Western Or. R. R. Co.		Conveying Right of Way McMinnville.
275—	Deed, R. W. Lancefield, Western Or. R. R. Co.		Conveying Right of Way Amity.
276—	Deed, R. J. Lancefield, Western Or. R. R. Co.		Conveying Right of Way Amity.
279—	Deed, W. T. Newby and wife, Western Or. R. R. Co.		Conveying Right of Way McMinnville.
281—	Deed, J. W. Cook and wife, Western Or. R. R. Co.		Conveying Lot 4, Block 14, McMinnville.
282—	Deed, Isaac McCoy, Western Or. R. R. Co.		Conveying Right of Way Polk County.
284—	Deed, Jos. Watt and wife, Western Or. R. R. Co.		Conveying lands in Am- ity.
287—	Deed, J. W. Nesmith and wife, Western Or. R. R. Co.		Conveying Right of Way Polk Co.
293—	Bond, Grange Business Assn., O. & C. R. R.		
296—	Deed, A. E. Parker, Western Or. R. R. Co.		Conveying Right of Way Polk Co.
298—	Deed, Jos. W. Suver, Western Or. R. R. Co.		Conveying Right of Way Polk County.
300—	Deed, A. P. Hotaline, Western Or. R. R. Co.		Conveying Lot 1, Block 6, Independence.
303—	Deed, Cox Douty and Co., Western Or. R. R. Co.		Conveying Right of Way Independence.
311—	Order, Co. Court Yamhill County, Western Or. R. R. Co.		Vacating Streets in Am- ity.

No.	Document.	Party of the		Synopsis of Instrument.
		First Part	Second Part	
313—	Power of Atty., Horace Lyman, W. D. Lyman.			
314—	Deed, Jos. Watt and wife, Western Or. R. R. Co.		Conveying Lots in Block 11, etc., town of Amity.	
317—	W. A. Wells and wife Western Or. R. R. Co.		Conveying Right of Way Benton County.	
318—	Deed, Martha Avery et al, Western Or. R. R. Co.		Conveying Right of Way etc., Corvallis.	
321—	Deed, Geo. Cooper et al, O. & C. R. R.		Conveying Right of Way etc., Yamhill County.	
331—	Deed, Sol K. Crowley and wife, Western Or. R. R. Co.		Conveying Right of Way Polk County.	
341—	Lease, R. Koehler, O. R. & N. Co.		Part of Block 111, Couch's Add'n.	
344—	Deed, Martha Avery, Western Or. R. R. Co.		Conveying land at Cor- vallis.	
359—	Deed, J. H. Bridges and wife, O. & C. R. R.		Conveying lands at Sai- em.	
367—	Deed, Daniel Jones and wife, O. & C. R. R.		Conveying lands at Sal- em.	
368—	Deed, Salem Flouring Mill Co., O. & C. R. R.		Conveying lands in Mar- icn Co	
369)				
370)				
371)—	Agreement, Jos. Holladay, R. Koehler, Agt.		Blocks and lots in Couch's Add'n Portland.	
372)				
393)				
524)				
524A)				
386—	Memorandum, R. Koehler,		Tax property held by R. Koehler.	
404—	Deed, W. T. Newby and wife, O. & C. R. R.		Conveying lands in Me- Minnville.	
405—	Deed, Chas. J. Seghers, O. & C. R. R.		Conveying lands in Mc- Minnville.	
407—	Release, T. R. Cornelius, O. & C. R. R.		Releasing interest in lands at Cornelius.	

No.	Document.	Party of the	Party of the	Synopsis of Instrument.
		First Part	Second Part	
448—	Lease,	H. Everding, Administrator,	Gravel Pit Clackamas Co.	
		O. & C. R. R.		
462—	Lease,	Aaron Rose, O. & C. R. R.	Gravel Pit Douglas Co.	
480—	Decree,	Circuit Ct. Douglas Co.,		
		O.&C.R.R., vs. Adams, et al,		
496—	Deed, Thos. F. Stephens and wife,		Conveying lands Secs. 15,	
		O. C. R. R.	and 22, R 1 S, R 1 E.	
498—	Assignment, J. G. Wangerman,		Agreement for purchase	
		A. A. Buck,	Lot 17, block 24, Hub-	
			bard.	
502—	Deed, F. M. Miller and wife,		Conveying Right of Way	
		O. & C. R. R.	Linn County.	
505—	Assignment, A. Koehler, Wm. Knight,		Agreement to purchase	
			Lots in Conby.	
515—	Deed, Larkin Fouts and wife,		Conveying Depot Grounds	
		O. & C. R. R.	Carlton.	
528—	Deed, O. & C. R. R.,		Conveying Lots and	
		N. P. Terminal Co.	Blocks in Couch's Add.	
			to Portland.	
536—	Deed, Mary T. Collins,	O. & T. Co.	Conveying Lots in Couch's	
			Add'n to Portland.	
541—	Deed, E. J. Jeffries, Sheriff,		Conveying Lots in	
		P. W. H. and Dock Co.	Couch's Addition to	
			Portland.	
542—	Deed, Estes & Stimson and wives,		Conveying Blocks 21, 23,	
		G. W. Weidler,	and 110, Couch's add'n	
			to Portland.	
543—	Deed, G. W. Weidler,		Conveying Blocks 21 and	
		P. W. H. and Dock Co.	110 Couch's Addition to	
			to Portland.	
544—	Deed, G. W. Weidler,		Conveying land in Wheel-	
		P. W. H. and Dock Co.	er's Add'n to East	
			Portland.	
545—	Deed, G. W. Weidler,		Conveying Blocks in	
		P. W. H. and Dock Co.	Wheeler's Addition to	
			East Portland.	

No.	Document.	Party of the		Synopsis of Instrument.	
		First Part	Second Part		
548—	Deed, H. H. Conklin, R. I. Evans,			Conveying Lot 1, Block 21, Couch's Add'n to Portland.	
549—	Deed, A. M. Starr, Sheriff,			Conveying Lot 1, Block 21, Couch's Add'n to Portland.	
	H. H. Conklin,				
550—	Power of Atty., H. H. Conklin,				
	Jno. McCracken,				
551—	Deed, B. Holladay and wife,			Conveying their interest in lands in Multnomah County.	
	P. W. H. and Dock Co.				
552—	Deed, G. W. Weidler,			Conveying Blocks in Wheeler's Add'n to East Portland.	
	P. W. H. and Dock Co.				
553—	Deed, Oregon Real Estate Co.,			Conveying Lots in Wheeler's Add'n to East Portland.	
	P. W. H. and Dock Co.				
554—	Deed, Jno. H. Couch and wife,			Conveying Lots in Couch's Add'n to Portland.	
	Wm. Collins, et al,				
555—	Deed, The Couch heirs,			Conveying Block 111, Couch's Add'n to Portland.	
	P. W. H. and Dock Co.				
556—	Deed, The Couch heirs,			Conveying Blocks 21 and 110 Couch's Add'n to Portland.	
	P. W. H. and Dock Co.				
557—	Contract, O. T. Company, O.&C.R.R.			Construction of Railroad.	
558—	Contract, O. T. Company, O.&C.R.R.			Construction of Southern Extension.	
566—	Bond, J. J. Wilson, O. & C. R. R.			For a Deed to lands in S. ½ of NE ¼ Sec. 21, T 36, S. R. 5 W.	
572—	Deed, R. Koehler, Trustee, O. & T. Co.			Conveying Blocks in R. R. Add'n to Town of Ashland.	
599—	Deed, Geo. Patterson and wife,			Conveying Lots 5 and 6 O. & C. R. R. Block 23 Hackleman's Add'n to Albany.	

No.	Document.		Party of the Party of the Synopsis of Instrument.	
			First Part	Second Part
637—Release,	Jos. Watt,	O. & C. R. R.	Claims against Company	on Contract No. 27.
638—Release,	M. Eischen,	O. & C. R. R.	Claims against Company	on Contract 1031.
639—Release,	Ludwig Hotz,	O. & C. R. R.	Claims against the Com-	pany on Contract No. 697.
657—10 Deeds,	Chas. F. Crocker,	O.&C.R.R.	Conveying Lots and	Blocks in East Portland.
664—Declaration,	Chas. X. Larrabee,		Adverse Claim to 32	
	O. & C. R. R.		acres of lands at Car-	shops.
668—	,Chas. W. Laurens,		Conveying Lots 1 and 2	
	O. & C. R. R.		Sec. 25, T 1 N, R 3 W.	
669—Release,	Wm. Bosch,	O. & C. R. R.	Claims against Company	on Contract 1245.
670—Deed,	Emma A. McCulloch,		Conveying Depot Ground	
	O. & C. R. R.		Grant's Pass.	
673—Receipt,	O. & C. R. R., R. Koehler,		Property turned over to	Company from receiver.
677—Agreement,	C. C. Ragsdale and		Town site and Depot at	
	Scott Griffin, R. Koehler,		Tolo.	
682—Agreement,	Peter Scharback,		Mortgage on Lots 3 and	
	R. Koehler,		4, Block 53, Gervaise.	
686—Acknowledgement,	Commr. Genl.		Receipt of May relocation	
	Land Office, R. Koehler,		of Road in Cow Creek.	
714—Lease,	The U. P. Co. and S. P. Co.,		Temporary right of way	
	N. P. Term. Company.		over Round House Lot.	
718—Power of Atty.,	Bertha Koehler,			
	R. Koehler,			
818—License,	O. & C. R. R.,		For the public use of	
	City of Independence,		Part of Depot Grounds.	
804—Release,	Mrs. E. A. Watson,		Claims for land in	
	O. & C. R. R.		Douglas County.	
823—Bill of Sale,	O. & C. R. R.,		Warehouse at Whiteson.	
	R. W. Phillips.			
883—Ordinance,	East Side Lumber Co.,		Use of Streets cross-	
	O. & C. R. R.		streets, etc., in Portland.	

No.	Document.	Party of the Synopsis of Instrument.	
		First Part	Second Part
836—Bond,	C. R. Ray,	O. & C. R. R.	Against Claims of J. R. Mitchell to certain Mineral lands.
837—Deed,	W. Galloway,	O. & C. R. R.	Conveying lands in Multnomah County.
875—Agreement, State of Oregon,		O. & C. R. R.	Use of Grounds at Fair Grounds Station.
876—Release, A. L. Patten,		O. & C. R. R.	Claim for cancellation of Contract for purchase Lot 4, Block 3, Marion.
896—Release, Aug. Woods,		O. & C. R. R.	Claims against Co. on Contract 1865.
898—Deed, P. P. Prim, trustee,		O. & T. Co.	Conveying Blocks in Town of Medford.
899—Deed, Thomas Chavener and wife,		O. T. Co.	Conveying Blocks in town of Gold Hill.
900—Deed, L. A. Rose and wife,		O. T. Co.	Conveying Blocks in town of Phoenix Add'n.
901—Deed, L. Colver and wife,		O. & T. Co.	Conveying Blocks in town of Phoenix Add'n.
902—Deed, Jonathan Bourne, Jr.,		O. T. Co.	Conveying Blocks in town of Grants Pass.
903—Deed, R. Koehler,		O. T. Co.	Conveying Blocks in Railroad Add'n to Ashland.
904—Deed, Lindsay Applegate,		R. Koehler, trustee,	Conveying lands in Ashland.
905—Deed, Eber Emery and wife,		Lucien Applegate,	Conveying lands in Ashland.
906—Deed, Lucien B. Applegate,		Lindsay Applegate,	Conveying lands in Ashland.
Certificate Corrected Survey of Claim 42 in T. 39 S, R 1 E.			
921—Lease, R. Koehler, Receiver,		Smith and Conklin,	Land at Grants Pass.
936—Agreement, O. R. & N. Co.,		R. Koehler, Receiver,	Temporary use of land in East Portland.
937—Agreement, F. H. Page,		R. Koehler, Receiver,	Side Track in East Portland.
938—Agreement, Constantine Magruder,		R. Koehler, Receiver,	Depot Grounds at Central Point.
959—Agreement, L. Feurer,		R. Koehler,	Purchase of Lot 4, block 19 in East Portland.
(Signed) CHARLES W. EBERLEIN,			

Q. Where was Mr. Charles W. Eberlein employed, —where was his office at the time this receipt or letter of August 23rd, 1905 was signed by him and identified as complainant's exhibit 9?

A. San Francisco.

Q. Have those documents referred to in this exhibit and in my interrogatories, or any of them been returned to the custody of the Oregon and California Railroad Company, or to Mr. Cotton, the secretary?

A. They have not.

Q. I show you what purports to be a journal of the proceedings of the Oregon and California Railroad Company, being "Journal of minutes No. 1, which for the purpose of identification may be marked complainant's exhibit 14," and will ask you if that is minute book No. 1,—the first minute book of the proceedings of the directors of the Oregon and California Railroad Company in the custody of the Secretary, Mr. Cotton?

A. Yes.

Q. Is that the same book that was received from the custody of his predecessor, Mr. George H. Andrews, former secretary?

A. Yes. It is admitted by the parties herein generally that any and all books which Mr. Steel has produced here are part of the secretary's books of the Oregon and California Railroad Company.

Counsel for complainant offers in evidence so much of the book marked for identification complainant's exhibit 14 as begins with page 6 and ends with page 95, and the signature of Ben Holladay,—down to and including the signature of Ben Holladay, President, at the top of page 95. and particularly the signatures of Ben Holladay to the various minutes appearing upon pages

6 to 95, both inclusive, where the same purports to be signed by Ben Holladay, president of the Oregon and California Railroad Company, and particularly offer the minutes found on pages 9-10-11-12-13-14-15-16 inclusive, and ask permisison to have the same spread upon the records in lieu of the original, and that the original may be withdrawn, and also to have the balance of said minutes from pages 17 to 95 including the signatures of Ben Holladay, president, to be likewise spread upon the records as complainant's exhibit No. 14, and the original withdrawn with the promise that the original will be submitted at the trial of this cause for the consideration of the court if desired and with the promise to prove the handwriting of Ben Holladay and to prove his signature to these minutes and to prove the signature of A. G. Cunningham, secretary by other witnesses.

Counsel for defendant does not object to having a copy of the minutes spread upon the records in lieu of the original, but objects to the introduction of the same in evidence as incompetent, irrelevant, and immaterial, and not the best evidence, and because no foundation has been laid for its introduction.

The pages of the book referred to from 6 to 95, both inclusive are received in evidence being a portion of the book marked for identification, complainant's exhibit 14, and are in words and figures as follows, to-wit:

JOURNAL OF PROCEEDINGS
OF THE
DIRECTORS
OF THE
OREGON and CALIFORNIA
RAILROAD COM-

PANY.
CERTIFICATE OF ELECTION.

We the undersigned Corporators in the "Oregon and California Rail Road Company" do hereby certify, that at a meeting of the Stockholders of such Corporation, held at the office of the Company in Portland, Oregon, this 17th day of March A. D. 1870, at eight o'clock P. M. all the Stockholders being present and Voting the following named persons were duly elected Directors of the "Oregon and California Rail Road Company" to serve for the term of one year next ensuing, to-wit:

BEN HOLLADAY.

WM. S. HALSEY.

I. R. MOORES.

GEO. W. WEIDLER.

C. H. LEWIS.

I. C. HAWTHORN.

and MEDORUM CRAWFORD,

and we the undersigned Corporators do hereby appoint the first meeting of such Board of Directors to be held at the office of the Company in Portland, Oregon, this 17th day of March, 1870, at 9 o'clock P. M. of said day. Witness our hands this 17th day of March, 1870.

(Signed)

BEN HOLLADAY.

C. H. LEWIS.

I. R. MOORES.

I. C. HAWTHORN.

M. Crawford.

Original on
file in Co's.
Office.

OATH OF OFFICE.

State of Oregon

ss.

County of Multnomah.

We, Ben Holladay, C. H. Lewis, I. R. Moores. I. C. Hawthorns, Medorum Crawford and Geo W. Weidler, being first duly sworn, do each solemnly swear and make oath that we will faithfully and honestly discharge our duties respectively, as Directors of the "Oregon and California Rail Road Company."

(Signed) BEN HOLLADAY.

C. H. LEWIS.

I. R. MOORES.

I. C. HAWTHORNE.

M. CRAWFORD.

GEO. W. WEIDLER.

Sworn and Subscribed

before me this 17th day of March A. D. 1870. Witness my hand and official seal.

GEO. W. MURRAY,

Notary Public Multnomah County,

(Seal) 5c Stamp.

State of Oregon.

Original of

Office of the Oregon and California

Record on

Rail Road Company, Portland,

Page 14

Oregon, March 17, 1870.

Stock Sub-

9 o'clock P. M.

scription Book.

Directors Pursuant to the certificate of the Corpor-
Meeting. ators (of Record on P 4 of this Book) in
this Corporation, fixing the time and place
of the first meeting of the Directors herein.

The board of Directors met at the office of the Company in Portland, Oregon, this day at nine o'clock P. M. Directors Present Messrs. Ben Holladay, C. H. Lewis, I. R. Moores, I. C. Hawthorn, Medorum Crawford, and Geo. W. Weidler, each of whom duly qualified by taking and subscribing an oath as provided by law, (of Record on Page 5 of this Book) to faithfully and honestly discharge his duties as such Director.

On motion of Mr. Moores, Dr. Hawthorne took the chair and called the meeting to order, The first business being the election of officers.

Election of Officers On motion of Mr. Lewis, Mr. Holladay was put in nomination for President and unanimously elected, whereupon Dr. Hawthorne vacated the chair, and Mr. Holladay took his seat

Ben Holladay elected as President of the Oregon and California Rail Road Company."

On Motion of Dr. Hawthorne, Wm. S. Halsey was put in nomination for vice President and was unanimously elected.

A.G. Cunningham, secretary On motion of Mr. Weidler, A. G. Cunningham was put in nomination for secretary and unanimously elected.

The board being now fully organized for the transaction of business, Mr. Moores offered the following resolution, Resolved

Messrs. That Messrs. Weidler and Lewis be appointed a committee to report to the next meeting of this board, a set of By-laws for government and regulation of the proceedings of the board, and regulating the duties of the officers thereof, also a "Device" for the corporate seal of the Company, and Resolved that until a permanent seal be adopted and prepared for use, the following be adopted as the seal of the Company, to-wit: a composition metal impression, with the words, "Oregon and California R. R. Company" in the outer Circle, and "Incorporated March 17th" in the inner circle, and the figures "1870" in the center.

Seconded by Dr. Hawthorne and passed,—The President then appointed Messrs. Weidler and Lewis, a committee in accordance with said Resolution.

Mr. Moores, then offered the following resolution:

Resolved: That this Company issue its bonds to the extent of Three Millions Five Hundred Thousand dollars (\$3,500,000, in denominations of One Thousand dollars each, or less, as may be hereafter determined, running for twenty years, payable in U. S. gold coin, President and with interest coupons attached at rate Secretary to of seven (7) per cent per annum, payable semi-annually in U. S. Gold Coin, Issue (\$3,500-000.) worth of at City of New York, and the President and Secretary are hereby authorized to execute such bonds and coupons attached, in accordance with this resolution, all in due form of law.

Seconded by Mr. Lewis and unanimously adopted.

The following resolution was offered by Dr. Hawthorn.

Resolved: That the President of this Company be and he is hereby authorized and empowered to act as the financial agent of this company, in the negotiation President and sale of its securities, and in the purchase of Iron and Rolling Stock, and Authorized to Act as other materials necessary in the construction of the "Oregon and California Financial Agent. Railroad," and for such purpose, he is hereby authorized and empowered to make and execute in the name of this Company, and under its seal, any, and all contracts, powers of attorney with right of substitution or otherwise, together with all necessary conveyances, mortgages or other writings, giving unto said President full power and discretion in the premises.

Seconded by Mr. Crawford and unanimously adopted.

On motion of Dr. Hawthorne, the foregoing proceedings were unanimously adopted.

On motion of Mr. Lewis the board adjourned to meet on Saturday 26th day of March, 1870, at 7 P. M.

BEN HOLLADAY, President.

C. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company, Portland, Or., March 26, 1870.

Directors Meeting. The Directors met pursuant to adjournment at 7 o'clock P. M. Present Messrs. Hawthorn, Weidler, Lewis and Mr. President.

The President called the meeting to order . On motion of Dr. Hawthorne the reading of the minutes of last meeting was dispensed with.

The Committee on By laws not being prepared to report on motion of Dr. Hawthorn were granted further time.

The following resolution was then offered by Dr. Hawthorn.

<p>Resolved: That the President of this Company be and he is hereby authorized and instructed to enter into negotiations with the "Oregon Central Rail Road Company" of Salem, Oregon, Incorporated April 22, 1867 for the purchase by this Company of the Rail Road of such Corporation now partly completed and in progress of construction including all the Rolling Stock and other property connected therewith, and including also all the property real, personal and mixed now owned by such "Oregon Central Rail Road Company," or to which it may in any wise be entitled, and including also all franchises of the said Corporation which it now owns or to which it is, or may be entitled by virtue of any act, or</p> <p>President Authorized to Negotiate for the Purchase of the Oregon Central Ry.</p>	<p>resolution of Congress or of the Legislature of the State of Oregon; or in any other way or manner, and for such purpose the President of this Company is further authorized to agree in writing in the name of this Corporation and under its seal for such purchase by and transfer to this Company of all such property, rights</p>
---	---

and franchises upon the following terms, to-wit: That in consideration of such conveyance, transfer and delivery to this Company, it shall agree to and with said "Oregon Central Rail Road Company," and to and with its Directors and Stockholders to assume and shall assume and agree to pay all the debts and liabilities of such "Oregon Central Rail Road Company," as the same mature and become due and payable of whatsoever name and nature, and this Company shall also indemnify and forever keep harmless the said "Oregon Central Rail Road Company" from any and all such payments and from all liability whatever, of every name and nature, for which said "Oregon Central Rail Road Company" may be liable at the date of the acceptance of these propositions.

Seconded by Mr. Lewis and unanimously adopted.

Adjourned. On motion of Mr. Lewis the board adjourned to meet on call of the President.

BEN HOLLADAY, President.

A. S. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Or., April 4th, 1870.

Directors Pursuant to call of the President, by
Meeting personal notice to each director, the board
met at 8 o'clock P. M.

Present, Messrs. Lewis, Crawford, Weidler and Mr. President.

The President called the board to order. Reading the minutes of the previous meeting dispensed with.

Mr. Lewis then offered the following preamble and resolutions:

Whereas, This Company has purchased and taken an assignment from the "Oregon Central Rail Road Company" of Salem, Oregon, Incorporated April 22nd, 1867, of all the rail road franchises and other property of such corporation including all the right, title, interest and claim both legal and equitable absolute and contingent of such corporation, of in, and to the lands and all other benefits granted to the Oregon Company by an Act of Congress entitled "An act to aid in the construction of a Rail road and telegraph line from the Central Pacific Rail Road in California to Portland, Oregon"—Approved July 25th, 1866, and amendments thereto, Therefore:

Resolved: That this company do accept the grant conferred by such act of Congress and all the benefits and emoluments therein or thereof granted and of O. C. Ry. upon the terms and conditions therein specified and,

Resolved: That the President and Secretary of this Company do and they are hereby authorized and directed to file the assent of this Company to such act of Congress and amendments thereto as aforesaid in the office of the Secretary of the Interior, which shall be done by filing a copy of these resolutions in such office, certified to under the seal of this Company and signed by the President and Secretary respectively.

Resolved further: That a copy of the deed of assignment from said "Oregon Central Rail Road Company" certified to by the President and Secretary under the seal of this Company be also filed in such office of the Secretary of the Interior and accompanying these resolutions.

Seconded by Mr. Weidler and passed unanimously.

Copy of Deed	The following resolution was offered
of Purchase to	by Mr. Weidler;
be Filed in	Resolved: That the President and
Office Secy.	Secretary of this Company be and they
Interior.	they are hereby authorized and instructed
	to make, execute and deliver to the following named
Authorizing	persons, in the name of this Company, and under its
Bond of In-	seal, and their signatures a bond of in-
demnity.	demnity in the following form, that is to
	say to the persons named in the copy
	of such bond hereinafter given and for
	the purposes therein stated, that is to
say,—	

"Know all men by these presents, that the "Oregon and California Rail Road Company," a Corporation duly Incorporated and organized at Portland, Oregon, on the seventeenth (17th) day of March in the year of our Lord One Thousand eight hundred and seventy (1870) under and by virtue of the General Incorporation law of the State of Oregon, and acts supplemental thereto and amendatory thereof, is held and by these presents firmly bound unto the following named persons,

citizens of the State of Oregon, to-wit: I. R. Moores, I. H. Moores, E. N. Cook, John F. Miller, Geo. S. Woods, F. F. McPattorn, Jacob Concer, I. H. Doughit, I. H. Fostir, F. A. Chenowth, S. W. Ellsworth, I. H. D. Henderson, S. F. Chadwick, John E. Ross, Geo. W. Weidler, I. C. Hawthorn, S. B. Parish, A. L. Lovejoy, Samuel M. Smith, I. S. Smith, G. B. Smith, A. M. Loryea, Philip Wasserman, Hamilton Boyd, S. A. Clarke, A. F. Hedges, Geo. A. Eads, —————

jointly and severally in the full penal sum of one million (\$1,000,000.00) Dollars in Gold Coin of the United States, for the payment of which sum of one Million Dollars gold coin as aforesaid the said "Oregon and California Rail Road Company" aforesaid bounden herein, doth hereby firmly bind itself and its successors by these presents, sealed with its corporate seal hereunto duly affixed by A. G. Cunningham Secretary of its Board of Directors, duly authorized and empowered by a resolution of such board, and witness also the Signatures of Ben Holladay its President and A. G. Cunningham its Secretary, attached, they being duly authorized to execute this bond, by a resolution of the board of Directors, duly passed at a legal meeting of such Board, held at the office of their Company in Portland, Oregon, the 4th day of April, A. D. 1870.

Whereas the said I. R. Moores, I. H. Moores, E. N. Cook, John F. Miller, Geo. S. Woods, F. F. McPatton, Jacob Concer, I. H. Douthi, I. N. Foster, F. A. Chenowith, S. Ellsworth, I. N. D. Henderson, S. F. Chadwick,

John E. Ross, Geo. W. Weidler, I. C. Hawthorn, S. B. Parish, A. L. Lovejoy, Samuel M. Smith, I. S. Smith, G. B. Smith, A. M. Loryea, Philip Wasserman, Hamilton Boyd, S. A. Clarke, A. F. Hedges, Geo. A. Eads,—

were on the 28th day of March A. D. 1870, or prior thereto corporators, Directors and Stockholders of the "Oregon Central Rail Road Company," a corporation Incorporated at Salem, Oregon, on the 22 day of April, A. D. One Thousand eight hundred and Sixty seven (1867), and WHEREAS on the 28th day of March A. D. 1870, by order of its board of directors and a vote of over two thirds of the stockholders of the last named Corporation, the Rail Road and all other property then owned by and belonging to the said last named Company was sold and directed to be conveyed to the "Oregon and California Railroad Company" bounden herein, and the same has since such date been so conveyed, and

Whereas: Some question has been heretofore and prior to such date, made by divers persons interested and claiming to be interested in such "Oregon Central Rail Road Company" aforesaid that the corporators, Directors and Stockholders before named, or some of them had at the time of the Incorporation and organization of such "Oregon Central Rail Road Company" and at divers times subsequent to such Incorporation, and organization up to the date of its dissolution and in the act of such dissolution disposition of its Capital Stock, disposal of its property etc., rendered themselves personally re-

sponsible in damages either by their acts as corporators, stockholders or directors or both, to divers persons as aforesaid, so interested or claiming to be interested in such "Oregon Central Rail Road Company" and especially in the subscription of its stock, and in the issue of what is and has been known and called, in such "Oregon Central Rail Road Company" as (prefered seven per cent) "non assessable Gold bearing Stock," which Stock to the extent of Two Million dollars was issued by such corporation, and in the subsequent acts and doings of such persons as such corporators, directors and stockholders of such "Oregon Cenrtal Rail Road Company" in reference to such Prefered seven per cent Non Assessable Gold interest bearing stock," and

Whereas, It was agreed and understood by and between the corporators, directors and stockholders aforesaid to whom this bond is executed and delivered, an l the "Oregon and California Rail Road Company" prior to and at the time of the sale, transfer, and conveyance of all the Rail Road and property of the said "Oregon Central Rail Road" and at and prior to, the order of the Stockholders and Board of Directors of such "Oregon Central Rail Road," and as a part of the consideration of such sale, transfer, conveyance and of such orders, cancellation of stocks, etc., that the said "Oregon and California Rail Road Company" bounden herein should make, execute and deliver to the persons hereinbefore named, to whom this bond is executed, a bond of indemnity in the penal amount of one million Dollars, indemnifying such persons jointly and severally, against all

and every claim, or claims, for damages, that might then, or at any time hereafter exist, or be made against such persons or any of them, by any person or persons for any act or acts of all or any of such persons as such corporators, directors, or stockholders of the said "Oregon Central Rail Road Company" at any time whatsoever, and against all costs, disbursements and expenses, which they or any of them may incur in defending against any such claim, whether such claim be held valid or otherwise, all of which agreements for the execution of this bond as aforesaid, was in part between such corporators, directors, and stockholders, and the "Oregon and California Rail Road Company" bounden herein, such last named corporation acting by and through Ben Holladay its President, duly authorized and empowered.

Therefore in consideration of the premises, if the said "Oregon and California Rail Road Company" bound herein, shall at any times hereafter, save, indemnify and keep harmless, the said persons hereinbefore named parties of the second part and to whom this bond is executed, and each and all of them from the payment of any and all costs, expenses, damages, claims and demands whatsoever, which they or either or any of them may at any time hereafter pay or be compelled to pay to any person or persons, firm or firms, company or corporation by reason of any act or thing whatever done by them, or any of them, at any time heretofore as such corporators, stockholders, or directors of the "Oregon Central Rail Road Company" either individually or collectively as such stockholders or directors and shall further forever

hereafter save, indemnify and keep harmless each and all of the persons hereinbefore named, and to whom this bond is executed from the payment of any and all costs, disbursements and expenses, which persons of the second part herein or any of them may at any time hereafter incur or pay in the defense of any claim whatever that they may at any time hereafter be made in any Court or Courts, State or Federal against any or all of the said persons to whom this bond is executed by reason or on account of any act or thing done by either, any or all of such persons aforesaid, while acting as a corporator, or corporators, director or directors, or as stockholder or stockholders of the said Oregon Central Railroad Company," aforesaid at any time whatever, whether such claim or claims, be held valid or be sustained or otherwise, then in such event this bond shall be null and void, otherwise it shall be and remain in full force and virtue in law.

In testimony whereof and for the faithful performance of the conditions of this bond to the said persons of the second part herein to whom this bond is executed, their heirs executors and administrators, the said Oregon and California Rail Road Company party of the first part, and bounden herein has caused its corporate seal to be attached by A. G. Cunningham its secretary, thereunto duly authorized and empowered by a resolution of this board of Directors, and also witness the name of the "Oregon and California Rail Road Company" and the signature of Ben Holladay President thereof, and of A. G. Cunningham its Secretary, hereto affixed by

then the said Ben Holladay and A. G. Cunningham, they being thereto duly authorized by a resolution of the board of Directors of such "Oregon and California Rail Road Company."

Done at Portland, Oregon, this 4th day of April, A. D. one thousand Eight hundred and Seventy (1870.)

Signed Oregon and California Rail Road
Company.

By BEN HOLLADAY, President, Oregon
and California Rail Road Company.

By A. G. CUNNINGHAM, Secy.

Witness Present

I. H. Mitchell.

I. I. Hoffman.

(Seal.)

The foregoing bond was read, and the resolution seconded by Mr. Crawford and unanimously adopted, Bond of Indemnity whereup the President and Secretary executed the bond by Approved. signing as above and sealing with the corporate seal of the Company.

Bond. of Indemnity On motion of Mr. Lewis it was
Ordered Delivered. unanimously approved and the
Secretary of this Company ordered to deliver the same to the parties herein named, and to whom it is executed.

Adjourned On motion of Mr. Crawford the board
adjourned.

BEN HOLLADAY, President.

A. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Or. April 14, 70.

Directors Pursuant to Call of the President, by
Meeting. personal notice to each Director, the board
met at 3 o'clock P. M.

Present Messrs. Hawthorn, Crawford, Moores, Weid-
ler and Mr. President.

The President called the meeting to order and an-
nounced the board as ready for business, whereupon Mr.
Moores offered the following Preamble and resolu-
tions:

Preamble. Whereas, this board at a meeting thereof
duly called and held at the office of this
Company on the 17th day of March, A. D. 1870, adopted
a resolution in the following words and figures, that is
to say,

“Resolved: That this company issue its bonds to the
extent of (\$3,500,000) Three Million five Hundred

Resolution Thousand dollars in denominations of

Authorizing One Thousand dollars each ,or less,

Issue of Bonds as may be hereafter determined run-
(\$3,500,000) ning for twenty years, payable in U.

Repealed. S. Gold Coin, with interest coupons
attached at rate of seven per cent per
annum payable semiannually in U. S.

Gold Coin at City of New York and the President and
Secretary are here authorized to execute said bonds and
coupons attached in accordance with this resolution,
and in due form of law.”

Which resolution is recorded on page seven (7) of the Records of the proceedings of this Company, reference being thereto had will more fully appear, and Whereas, it has become necessary to issue bonds to a greater extent than is provided for in and by such resolution, and to authorize the execution of a mortgage to secure the same, therefore:

Resolved: That the resolution aforesaid be and the same is hereby recinded, and the following be and the same is hereby adopted in lieu thereof, that is to say:

Resolved: That this Company make, execute, issue and deliver under its corporate seal, its bonds to the extent of Thirty Thousand dollars per mile, on each mile of its projected Rail Road and branches, amounting in

Authorizing	all to Ten Millions Nine hundred
an Extended	and fifty thousand dollars (\$10,-
Issue and Delivery	950,000) in denominations as
of Bonds (\$10,-	follows, that is to say Seven Mil-
950,000) to Trustee.	lions four hundred and fifty
	thousand (\$7,450,000) dollars
	of one thousand (\$1,000) dol-

lars each, three Millions (\$3,000,000) dollars of Five Hundred (\$500.00) dollars each and Five Hundred thousand (\$500,000) dollars of One Hundred (\$100) dollars each, that each of such bonds shall be made payable in Gold Coin of the United States of America, to the holder of thereof in the City of New York on the 1st day of April A. D. One thousand eight hundred and ninety (1890), with interest thereon at the rate of seven per centum per annum payable in Gold Coin as afore-

said, free from any U. S. Government Tax semi annual-ly, on the 1st days of April and October of each year, at the Banking House of Messrs. Dabney Morgan and Co., in the City of New York on presentation of interest coupons, which interest on each bond shall be represented by forty interest coupons attached thereto duly executed, all of which bonds shall bear date April fifteenth (15th) A. D. One thousand eight Hundred and Seventy (1870) and the President and secretary of this Company, are hereby authorized and directed to execute such bonds with Coupons attached aforesaid and the same deliver to Faxom D. Atherton and Wilbur S. Satham, of the City and County of San Francisco, State of California, as trustees thereof, for the purchasers and holders of all such bonds aforesaid, being to raise money to enable this Company to purchase materials and proceed with the President and construction and equipment of its Secy. to Execute Rail Road and with the construction and Deliver to of Telegraph Line, and endorsed on Trustee. each of such bonds, shall be printed and engraved, a certificate signed by the said Faxom D. Atherton and Wilbur S. Latham, to the effect that such bond is one of the series aforesaid constituting the Ten Millions Nine Certificate Hundred and fifty thousand dollars, so of Trustee. authorized as aforesaid.

Resolved Further: That the President and Secretary of this Company be and they are hereby authorized and instructed to execute and acknowledge in the name of this company, and

in its behalf, and under its corporate seal, to Faxom D. Atherton and Wilbur S. Latham a mortgage conveying, assigning and transferring, to them all the corporate property, effects and franchises real, personal and mixed, of this Company, save and except the franchises and lands granted to the Oregon Company by an act of Congress approved July 25, 1866, entitled "An Act Excepting Lands, President granting lands to aid in and Secretary Authorized the construction of a Rail to Execute and Deliver Road and Telegraph Line Mortgage to F. D. Atherton from the Central Pacific and M. D. Latham. Railroad in California to Portland, in Oregon" and acts supplementary there-

to, and amendatory thereof, which lands and franchises granted by such acts are now owned by this Company and which shall not be included in such mortgage, but shall be conveyed to trustees for the benefit of the holders of such bonds, as hereinafter stated, which fact shall be recited in such mortgage, and which mortgage shall be so executed as a security for the payment of said Ten Million nine hundred and fifty thousand dollars to the holders thereof according to the tenor and legal effect of such bonds and the interest to grow due thereon, which mortgage shall bear date April fifteenth (15th) A.D. One Thousand Eight Hundred and Seventy (1870) and shall be recorded in the office of the County Clerk of each County in the State of Oregon through which the Rail Road of this Company is constructed and to be constructed.

Resolved further: That the President and Secretary of this Company be and they are hereby authorized and instructed to make, execute and deliver to Faxon D. Atherton, Wilbur S. Latham and Wm. Norris of San Francisco, California, in the name of this Company and under its corporate Seal, a Deed of Conveyance of all the lands and franchises granted to the Oregon Company by the Act of Congress approved July 25th, A. D. One Thousand Eight Hundred and Sixty six, entitled "an Act granting lands to aid in the Construction of a Rail Road and Telegraph line from the Central Pacific Rail Road in California to Portland, In Oregon" and acts supplemental thereto, and amendatory thereof, which lands and franchises are now owned by this Company, such conveyance shall be in trust for the benefit of the holders of the bonds of this Company, shall authorize such trustees to sell, or otherwise dispose of any of such lands or franchises, prior to the maturity of such bonds, only to such persons and in the terms and in the manner as may be hereafter specified by this Company, all proceeds arising from the sale thereof shall be such parties, trustees, aforesaid, be from time to time as the same are received, invested in United States Securities, which proceeds and securities, shall constitute, a sinking fund for the payment of the principal of the Ten Million nine hundred and fifty thousand dollars of bonds of this Company, this day authorized to

be issued, such fund to be under the management and control of such trustees for the mutual interest of this Company and its bond holders, such conveyance of trust shall recite, that in the event that any of the bonds aforesaid should remain unredeemed after maturity of the principal thereof, and the fund aforesaid should be insufficient to redeem the same, then such trustees shall have full authority to convert any of the lands aforesaid

Sinking Fund then remaining undisposed of into cash, by sale thereof at public auction to the highest bidder in the City of Portland, in the State of Oregon, first giving public notice thereof, by publication in some weekly newspaper of general circulation, published in the City of Portland, for at least six weeks previous to such sale, and all

Sale of Lands to Pay Bonds. proceeds of such sinking fund, if any remains after the payment of the principal of such bonds, and all moneys remaining arising from the sale of such lands, and all interest of said trustees therein, by virtue of such trust, shall upon the payment or redemption of all such bonds either before or after their maturity, be surrendered and transferred to this Company, and such deed of trust shall contain any and all provision which the President and Secretary of this Company may deem material, necessary, or proper, to secure the proceeds of the sale of all such lands for the purposes aforesaid and the mutual protection of the interests of of this Company and its bond holders.

Which was seconded by Mr. Crawford and unanimously adopted.

Mr. Morris then offered the following resolution:

Resolved: That the following be and the same is hereby adopted as the permanent seal of this Corporation, a metal impression with the words "Oregon and California Rail Road Company" in the outer circle, and the Adopting words and figures following in the Permanent Seal. inner circle or center, "Incorporated March 17, 1870." Vignette as shown by the impression hereon made from said seal, to-wit:

(S E A L)

Repeal and The temporary seal heretofore adopted
set aside of by resolution of this board passed March
temporary 17th, 1870, be and the same is hereby re-
seal. pealed and set aside.

Which was seconded by Mr. Weidler and unanimously adopted.

On motion of Dr. Hawthorne the board adjourned.

BEN HOLLADAY, President.

A. G. CUNNINGHAM, Secy.

Office of the O. and C. R. R. Co.,

Portland, Or. June, 23, 1870.

Pursuant to call the board met at 8 o'clock P. M. Present Messrs. Hawthorn, Weidler, Lewis and Mr. President.

The President called the meeting to order and announced the board ready for business, whereupon the Chief Engineer of the Company was introduced and presented for the examination and acceptance of the board, a map showing the line of the Company's Road

as located from the south line of Township 27 near Roseburgh to the south line of Township 34 near Rogue River, which was carefully examined, and on motion of Dr. Hawthorne, seconded by Mr. Lewis, unanimously adopted, as the line upon which the road shall be built.

Map to There being no further business before the board, on motion of Mr. Weidler, seconded by Dr. Hawthorn, the board adjourned.

BEN HOLLADAY, President.

A. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Ore. Oct. 11, 1870.

Pursuant to call by the President, by personal notice to each Director, the board met at 12:30 P. M.

Present Messrs. Lewis, Weidler, Moores and Mr. President.

The President called the meeting to order and there being a quorum present, announced the board ready for business.

The following resolution was then read to the board.

Resolved: That the President of this Company be, and he is hereby authorized to negotiate with any person or persons whomsoever in the name of the Company and for its use and benefit, a loan or loans to such extent in both number and amount and for such time and upon such terms, as he may deem proper, and for such purpose he is hereby authorized, directed, and empowered to issue the notes, bonds, or other evidences of debt of this company in its name and under its seal, or other-

wise, and to secure the same, he is further authorized to pledge as collateral any of the Bonds of this company, and on motion of Mr. Lewis seconded by Mr. Moores unanimously adopted.

The following preamble and resolution was then read to the board:

Wehreas the whole amount of the Capital Stock of this Company, viz, Twenty Millions of Dollars, (\$20,-000,000,) has been subscribed for and taken by the fol-

following named persons in the following proportions, viz,		
Ben Holladay	134,996 Shares	\$13,499,600
C. Temple Earnest	50,000 Shares	5,000,000
Wm. S. Halsey	5,000 Shares	500,000
Wm. Norris	5,000 Shares	500,000
Geo. W. Weidler	5,000 Shares	500,000
C. H. Lewis	1 Share	100
I. R. Moores	1 Share	100
I. C. Hawthorn	1 Share	100
Medorum Crawford	1 Share	100

and Whereas the persons before named are now the owners respectively of the number of shares of stock set opposite their respective names as above, such persons constituting the whole number of stock holders in this Company at the present time, and

Whereas this Company now owns over fifty miles of Rail Road and Telegraph line, fully equipped and in running order, and also a large extent of Rail Road bed ready for the track, also large and valuable land grants, franchises and property, real and personal, the value of all of which is (\$20,000,000.) Twenty Millions Dollars, therefore,

Resolved: That the said Rail Road and Telegraph line and equipment thereof, land grants, franchises and other property, including all the property of this Company be and the same is hereby applied in full payment of the aforesaid stock, crediting each of the aforesaid stock holders with the amount proportioned to the stock set opposite his name and calculated upon the basis of the said valuation of \$20,000,000. and all the said stock is hereby declared to be fully paid up, and the Secretary is hereby instructed to issue to each of the said stock holders the amount of stock subscribed for by him, and now held and owned by him as aforesaid to be held by such stock holder as full paid stock.

And on motion of Mr. Lewis seconded by Mr. Weidler, unanimously adopted.

On motion of Mr. Lewis seconded by Mr. Moores the board adjourned subject to call of the President.

BEN HOLLADAY, President.

A. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Ore. Nov. 1, 1870.

Pursuant to Call by the President, by written and personal notice to the Directors, they met at ten (10) o'clock A. M.

Present Messrs. Weidler, Hawthorn, Moores, Lewis, Crawford and Mr. President.

Call. The President called the meeting to order and there being a Quorum present, he announced the board ready for business.

Whereupon Messrs. Weidler and Lewis, the committee

appointed on By-laws Reported on the following, which was read to the board and acted on Seriatim.

Article 1st.

The board of directors shall consist of seven (7) members, to be annually elected by a majority vote of the stockholders to serve for one (1) year, or until their successors are elected and qualified.

Vacancies occurring in the board by death, resignation, or otherwise, shall be filled by the board electing a Committee stockholder of the Company to serve for Report. the remainder of the term. Any director ceasing to be a stockholder, ceases to be a director.

On motion of Mr. Moores, seconded by Mr. Crawford, the foregoing article 1st was unanimously adopted.

Article 2nd.

The officers of the board shall be a President, Vice President and Secretary, who shall be elected by the directors at their first meeting after the annual election, to serve for one (1) year, or until their successors are elected and qualified.

On motion of Mr. Crawford, seconded by Mr. Moores the foregoing article 2nd was unanimously adopted.

Article 3rd.

The Directors shall hold regular monthly meetings on the second Wednesday of each month, at the office of the Company at the hour of Eleven (11) o'clock A. M. of said day.

A Majority shall constitute a quorum for the transaction of business, provided that no by-laws shall be act-

ed on except at a regular meeting of the board when all the members are present and the same shall have been offered at a regular meeting previous thereto.

Notice of all called or special meeting of the board of directors shall be given by either serving notice thereof personally or leaving such notice at the office or residence or place of business of such director, provided, it shall not be necessary to notify any director that may be absent from the State, of any meeting of the board, provided a quorum is within the State.

On motion of Mr. Crawford, seconded by Mr. Moores the foregoing article third (3rd) was unanimously adopted.

Article 4th.

Upon the request in writing signed by any two of the directors, stating the business to be considered and acted on by the board, the President shall call a meeting of the board for such time as he may decide.

On motion of Mr. Crawford, seconded by Mr. Lewis, the foregoing article (4th) was unanimously adopted.

Article 5th.

There shall be an annual election held by the stockholders of this Company on the second (2nd) Tuesday of April of each year at the office of this Company, at which the President shall preside and sign a certificate of the result of such election.

The voting shall be by ballot, each stockholder shall cast one vote for each share of stock standing in his name on the books of this Company on the day of such election, upon which, there is no assessment due and unpaid.

Shares of Stock voted by proxy shall not be counted unless the power of attorney authorizing said proxy be attached to such ballot.

On motion of Mr. Moores seconded by Mr. Crawford, the foregoing article fifth (5th) was unanimously adopted.

Article 6th.

Each stockholder shall be notified by written or printed notice delivered to him or mailed to his address, so as to be received at least ten days (10) previous to the day for holding said election, Stating the time and place of holding the same.

On motion of Mr. Crawford seconded by Mr. Weidler, the foregoing article sixth (6th) was unanimously adopted.

Article 7th.

The transfer book of the Company shall be closed for ten (10) days previous to and on the day of the stockholders annual election. The Secretary shall make a certified statement of the Stockholders on the day of said election for the government thereof.

On motion of Mr. Lewis seconded by Mr. Crawford, the foregoing Article (7th) Seventh was unanimously adopted.

Article 8th.

The President shall presied at all regular and called meetings of the board, shall call the board together as often as he may deem proper, shall have full control of all and every branch of the locating, equipping and operating the road to be built by this Company, have full authority and power to employ heads of departments

and operations and fix salaries to be paid to the same, also the salaries of officers of this Company, to Contract for and purchase railroad iron, locomotives, and all rolling stock required, tools, machinery, lands for right of way and depot purposes, all and every articles used or necessary for the construction ,equipment and operating of said road. To make contracts, negotiate loans in the names of this Company, and for its use, and to such extent and upon such terms as he may deem advisable,t also the sale of bonds and transact all financial business of the Company of every kind and nature whatever, prosecute or discontinue work on said road at pleasure and do all and every thing requisite to be done for the interest of said Company.

On motion of Mr. Moores, seconded by Dr. Hawthorn the foregoing Article Eighth (8th) was unanimously adopted.

Article 9th.

The Vice President shall assist the President in the discharge of his duties and in his absence shall preside at all meetings of the board and discharge all the duties of the President and have all the powers conferred upon the President of this Company by articles eight of his code and resolutions now on record of the minutes of this board.

On motion of Dr. Hawthorn seconded by Mr. Moores the foregoing article ninth (9th) was unanimously adopted.

Article 10th.

The Secretary shall attend all meetings of the board,

keep the minutes of the proceedings and record the same in a book to be kept for that purpose, keep the books, and papers of the Company in a neat and perspicuous manner in books, suitable for the purpose, furnish monthly trial balances of the books, showing face of ledger, balance of acts, etc, shall countersign all contracts, agreement, mortgages, deeds, stocks, and other papers binding said Company.

On motion of Mr. Moores, seconded by Dr. Hawthorn the foregoing article tenth (10th) was unanimously adopted.

Article 11th.

The permanent seal of this company shall be the same as the impression herein, no deed, mortgage, bond, stock certificate agreement or other instrument of writing of whatsoever nature or description shall be binding on this Company until signed by the President, Counter-signed by the Secretary and sealed with the corporate seal of the Company.

(S E A L)

On motion of Mr. Moores, seconded by Mr. Lewis, the foregoing articles Eleventh (11th) was unanimously adopted.

Article 12th.

At each regular meeting of the board the order of business shall be

- 1st. Reading the minutes of previous meetings and action thereon.
- 2nd. Unfinished business of last regular meeting.
- 3rd. Reports of Committees and action thereon.
- 4th. New business.

5th. No resolution or motion shall be considered unless it be seconded.

6th. All votes in the board shall be viva voce unless a division be demanded, then each member shall vote yea, or nay, in answer to his name when called, and a majority shall decide.

On motion of Dr. Hawthorn seconded by Mr. Moores, the foregoing article Twelfth (12th) was unanimously adopted.

Article 13th.

Each director shall secure Ten (10) dollars for each meeting of this board he shall attend.

On motion of Mr. Moores seconded by Dr. Hawthorn the foregoing article 13th was unanimously adopted.

The report of the committee having been adopted they were discharged from further report.

On motion of Mr. Weidler seconded by Dr. Hawthorn the board adjourned.

BEN HOLLADAY, President.

A. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Ore. Nov. 9th, 1870.

Owing to the absence of the President no meeting of the Directors was held this date.

A. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Ore. Dec. 10th, 1870.

Called Pursuant to call by the President by per-
Meeting. sonal notice to the Directors, the moard met
at 12:30 P. M. Present Messrs. Lewis,
Crawford, Weidler and Mr. President.

The Chief Engineer presented a corrected map showing the location of line of Road, after examination of which Mr. Lewis offered the following resolution.

Resolved: That the map this day presented to the Board by the Chief Engineer showing the line of location of the Company's Rail Road, as located from a point about three miles south of Roseburgh, at south line of Accepting Map Township Twenty seven (27) Range of Location of Six (6) West, To a point in Section Road to Sec. 30 Thirty (20) Township (30) thirty from 30 5 W. Range Five (5) West, be and the same is hereby adopted, this map and location to supercede in part and so far as the same is covered by resolution of this board, of June 23d, 1870, of the location of that date.

Seconded by Weidler and passed. On motion of Mr. Weidler seconded by Dr. Hawthorn, the board adjourned
BEN HOLLADAY, President

A. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Ore. Wednesday December 14, 1870.

No Meeting. Owing to absence of the President and no quorum being present, there was no meeting of the board held today.

A. G. CUNNINGHAM, Secy.

Office of the Oregon and California Rail Road Company
Portland, Ore. Wednesday Dec. 28, 1870.

Pursuant to call by the President by notice to each Director, the board met at 1 o'clock P. M.

Halsey Present Messrs. Lewis, Hawthorn,
Qualifies. Moores, Crawford and Mr. Weidler. Wm.
S. Halsey presents the following subscrib-
ed by him as Director of this Company and took his seat
as such Director.

Copy of Oath.

STATE OF OREGON,

County of Multnomah—ss.

Five I, Wm. S. Halsey, a director heretofore
Cent elected in the Oregon and California Rail
Stamp. Road Company do hereby solemnly swear
that I will faithfully and honestly discharge
my duties as a Director of the Oregon and California
Rail Road Company.

Signed WM. L. HALSEY,
Notary Seal. Subscribed and sworn to before me this
28th day of Dec. A. D. 1870.

ANDREW I. MOSES,

Notary Public in and for the State of Oregon.

The President being absent, on motion of Mr. Lewis,
seconded by Mr. Moores and unanimously adopted, Dr.
Hawthorn took the chair and having stated to the board
that the election of Mr. Halsey as Vice President at a
previous meeting of the board was considered infor-
mal and of no effect, and that the board should now pro-
ceed to elect a Vice President. Whereupon Mr. Lewis
nominated Wm. S. Hadley for the position of Vice Pres-
ident and on motion of Mr. Moores, seconded by Mr.
Crawford, the election was proceeded with by ballot, the
chair appointed Mr. Moores to Count the votes cast, on
the count being concluded Wm. S. Halsey was found

to have received five (5) votes being the whole number cast, was declared unanimously elected Vice President and took the chair vacated by Dr. Hawthorn and announced the board ready for business. On motion of Election of Mr. Moores seconded by Mr. Lewis, Wm. S. Halsey the regular order of business was V. President dispensed with, and by request of the President, Mr. Mitchell the Company's attorney read the following Preamble and Resolution for the consideration of the board:

Whereas, this corporation did on the fifteenth day of April A. D. One thousand Eight Hundred and Seventy, duly make, execute and deliver to William S. Latham, Faxon D. Atherton and William Norris, its certain Indenture in writing under seal bearing date on the last named day whereby it, the said Oregon and California Rail Road Company as party of the first part therein, in consideration of certain premises in said indenture declared and expressed, and in further consideration of one dollar the receipt whereof was therein and thereby acknowledged, did duly grant, bargain, sell, assign, alien, set over, convey and confirm unto the said William S. Latham, Faxon D. Atherton and Wm. Norris, parties of the second part therein, all and singular the lands and franchises with their appurtenances lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by act of Congress approved the twenty-fifth day of July in the year of our Lord One Thousand Eight Hundred and Sixty-six (1866) entitled "an Act granting lands to aid in the

construction of a Rail Road and Telegraph line from the central pacific Rail Road in California to Portland in Oregon," and acts supplemental and amendatory thereof and also all the right ,title, interest, claim property and demand whatsoever, both legal and equitable, present and prospective, absolute and contingent, which this Company (the Oregon and California Rail Road Company, then had or owned, or to which it was in any wise entitled in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the Oregon Company by the acts of Congress aforesaid and also all further right, title, interest, claim, property and demand which this Company might at any time hereafter, have own or acquire, to any lands lying and being anywhere in the State of Oregon or in any County thereof by virtue of any further compliance with the requirements of such acts of Congress by this Company, Together with all and singular the hereditaments, and appurtenances thereunto belonging, or in any wise appertaining to have and to hold the said granted lands, property and franchises and every part thereof unto the said Wilbur S. Latham, Faxon D. Atherton and William Norris and to their Successors or assigns forever, In Trust, nevertheless for certain uses and purposes and upon certain conditions and covenants in said indenture contained as by said indenture or the record thereof in the Records of Deeds in and for the County of Multnomah, in the State of Oregon, on pages 727 to 734 inclusive of Book K of said Records, reference being there-to had may more fully and at large appear, and Whereas,

Among other conditions, covenants and agreements, in said Indentures contained and set forth, the said Wilbur S. Latham, Faxon D. Atherton and William Norris or their successor or successors and assigns by and with the consent of this Company (the Oregon and California Rail Road Company) but not otherwise, were and are duly authorized, empowered, and directed at any time before the maturing of the principal of certain bonds of this Company (the Oregon and California Rail Road Company) in said Indenture mentioned and described, to sell and dispose of all or any part or portion of the lands and franchises so granted as aforesaid by such acts of Congress, and in any by said Indenture conveyed to said Trustees, to such person or persons firm or firms, associations or bodies corporate, and for such price and upon such terms as this Company (the Oregon and California Rail Road Company) might be and through its President advise, direct, instruct or agree to, and Whereas,

In pursuance of such last specified provision in said Indenture, the said Milton S. Latham, Faxon P. Atherton and William Norris have in pursuance of the advise, direction and instruction of the President of this Company, bargained, sold, transferred, aliened and conveyed all the lands, franchises, rights and interests granted and conveyed to them as such trustees by the said Indenture hereinbefore referred to, to the European and Oregon Land Company, an Incorporation duly incorporated and Organized under and pursuant to an act of the Legisla-

ture of California, approved the fourteenth day of April A. D. One thousand Eight Hundred and fifty three, entitled "An Act to provide for the formation of corporations for certain purposes" and the acts supplementary thereto and amendatory thereof and a full and complete copy of the Indenture by which such sale and transfer to said "The European and Oregon Land Company" is made, is as follows: which conveyance contains all the Stipulations, Conditions and Covenants, upon which such sale and transfer has been made,—that is to say,

This Indenture made and entered into at the City and County of San Francisco, State of California this day of in the year of our Lord one thousand eight hundred and Seventy, Between Milton S. Latham, Faxon D. Atherton and William Norris, Trustees, all of the City and County of San Francisco, parties of the first part, The European and Oregon Land Company, an Incorporation duly incorporated and organized under and pursuant to an Act of the Legislature of the State of California, approved the fourteenth day of April One thousand eight hundred and fifty three entitled "An Act to provide for the formation of Corporation for certain purposes" and the acts supplementary thereto and amendatory thereof, party of the second part, and the Oregon and California Rail Road Company, a body Corporate organized at Portland, In the State of Oregon on the Seventeenth day of March One thousand eight Hundred and Seventy under an Act of the Legislature of the State of Oregon approved the fourteenth day of October one thousand eight hundred and Sixty

two entitled "An Act providing for private Incorporations and the appropriation of private property therefor" and acts amendatory thereof and supplemental thereto, party of the third part, Witnesseth:—

Whereas the said Oregon and California Rail Road Company, did on the fifteenth day of April in the year of our Lord one thousand eight hundred and seventy, duly make, execute and deliver unto the said Milton S. Latham, Faxon D. Atherton and William Norris its certain Indenture in writing under seal bearing date on the last named day whereby the said Oregon and California Rail Road Company as party of the first part therein, in consideration of certain premises in said indenture declared and expressed, and in further consideration of certain of one dollar, the receipt whereof was therein and thereby acknowledged, did duly grant, bargain, sell, assign, alien, set over and enfeof, convey and confirm unto the said Milton S. Latham, Faxon D. Atherton and William Norris parties of the second part therein all and singular the lands and franchises with their appertences lying and being in the State of Oregon, granted or intended to be granted to the Oregon Company by act of Congress approved the twenty fifth day of July in the year one thousand eight hundred and Sixty Six entitled "An Act granting lands to aid in the construction of a Rail Road and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" and acts supplemental thereto and amendatory thereof; and also all the right title interest, claim, property and demand whatsoever, both legal and equitable, present

and prospective, absolute and contingent which the said Oregon and California Rail Road Company there had or owned or to which it was in any wise entitled in and to any and all lands and franchises in the State of Oregon granted or intended to be granted to the Oregon Company by the acts of Congress aforesaid and also all further right, title, interest, claim, property and demand which the said Oregon and California Rail Road Company might at any time thereafter have, own, or acquire to any lands lying and being anywhere in the State of Oregon, or in any County thereof by virtue of any further compliance with the requirement of such acts of Congress by the said Oregon and California Rail Road Company, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the said granted lands, property and franchises, and every part and parcel thereof unto the said Milton S. Latham, Faxon D. Atherton and William Norris, and to their successor or successors or assigns forever, In Trust, nevertheless for certain uses and purposes and upon certain conditions and covenants in said Indenture contained, as by said Indenture or the record thereof, in the Records of Deeds in and for the County of Multnomah in the State of Oregon on pages 727 to 734 Inclusive of book K. or said Records, reference being thereto had may more fully and at large appear, And Whereas among other conditions, covenants, and agreements in said Indenture contained and set forth, the said Milton S. Latham, Faxon D. Atherton, and William Norris, or their successor

or successors and assigns by and with the Consent of the said Oregon and California Rail Road Company, but not otherwise, were and are duly authorized, empowered, and directed at any time before the maturing of the principal of certain bonds of the said Oregon and California Rail Road Company in said Indenture mentioned and described, to sell and dispose of all or any part or portion of the lands and franchises granted as aforesaid by such acts of Congress, and in and by said Indenture conveyed to said Trustees to such person or persons firm or firms, associations or bodies corporate and for such price and upon such terms as the Oregon and California Rail Road Company might by and through its President, admit, direct, instruct or agree to, Now Therefore this Indenture Witnesseth, that the said Milton S. Latham, Faxon D. Atherton and William Norris, Trustees as aforesaid, under and pursuant to the power and authority in them vested in and by the said Indenture first hereinabove referred to and in consideration of the premises and of the certain covenants and agreements hereinafter contained and set forth and to be performed and kept by the said European and Oregon Land Company, and in consideration of the sum of one dollar, lawful money of the United States, to them in hand paid by the said European and Oregon Land Company the receipt whereof is hereby acknowledged, and also in pursuance of the advice, direction, instruction and agreement in writing to that effect of the said Oregon and California Rail Road Company, party of the third part, by and through its President, have granted, bargained,

sold and assigned, aliened, set over, enfeoffed, conveyed and confirmed, and by these presents do grant, bargain, sell, assign, alien, set over, enfeoff, convey and confirm unto the said European and Oregon Land Company, party of the second part hereto, All the lands and franchises with their appuretnances, lying and being in the State of Oregon, granted or intended to be granted to the said Oregon Company by act of Congress approved the twenty-fifth day of July One thousand eight hundred and Sixty six entitled "An Act granting lands to aid in the contrsuction of a Rail Road and Telegraph line from the Central Pacific Rail Road in California to Portland in Oregon" and acts supplemental thereto and amendatory thereof, and Also all the right ,title, interest, claim, property and demand whatsoever, both legal and equitable, present or prospective, absolute and contingent, which the parties of the first part hereto now have or hold or to which they may be in anywise entitled in and to any and all lands and franchises in the State of Oregon, granted or intended to be granted to the said Oregon Company by the Acts of Congress aforesaid and Also all future right, title, interest, claim, property and demand which the parties of the first part hereto may at any time hereafter have, own or acquire, to any lands, iying and being any where in the State of Oregon, or in any County thereof by virtue of any further compliance with the requirements of such Acts of Congress, by the party of the third part hereto, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining and being

the same lands, tenements, franchises, hereditaments and appurtenances, granted, conveyed and assigned unto the party of the first part hereto by the Oregon and California Rail Road Company by Indenture bearing date the fifteenth day of April one thousand eight hundred and Seventy has by said Indenture or the Record thereof in the Records of Deeds in and for the County of Multnomah in the State of Oregon on pages 727 to 734 Inclusive of Book K of said records, reference thereunto had may more fully and at large appear, To Have and To Hold the said granted lands, property and franchises and every part and parcel thereof unto the said European and Oregon Land Company party of the second part hereto and to its successors and assigns forever, And the said parties of the first part and all and every other person or persons whomsoever lawfully or equitably claiming any estate, right, title, or interest of in and to the hereinbefore granted premises by, from and under them and each of them shall, and will, at any time, or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, or its successor or successors or assigns, make, do and execute, or cause to be made, done and executed, all and every such further and lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually, vesting and confirming the premises, lands and franchises hereby intended to be granted in and to the said party of the second part, as by the said party of the second part, or its successor or successors or the Council learned in the law, shall be reasonably desired, advised or required,

And also that the said parties of the first part, the above granted, bargained, sold and assigned premises, and every part and parcel thereof, with the appurtenances thereof unto the said party of the second part, or its successor or successors, and assigns against the said parties of the first part and their successors and against all and every person and persons whosoever lawfully claiming or to claim the same by, through, or under them, it shall and will warrant and by these present forever defend, And in Consideration of the premises, the said European and Oregon Land Company, party of the second part hereto hath covenanted promised and agreed and doth hereby covenant promise and agree to and with the said Milton S. Latham, Faxon D. Atherton and William Norris, Trustees as above said in manner following, that is to say. THE said party of the second part hereto shall and will on or before the first day of April in the year of our Lord, one thousand eight hundred and eighty nine pay to said Milton S. Latham, Faxon D. Atherton and William Norris, Trustees as aforesaid, the price or sum of One and one quarter dollars, lawful money of the United States for each and every acre of said lands and premises hereby conveyed to the party of the second part, be the same more or less. It is further covenanted and agreed by the said parties of the first part that they will deliver or cause to be delivered to the party of the second part at San Francisco from time to time all and singular the plots or surveys of the lands and premises hereby sold as the same may be segregated

from the public domain and set apart to the Oregon and California Rail Road Company party of the third part hereto pursuant to law and for the purposes mentioned in the act of Congress passed the twenty-fifth day of July One thousand eight hundred and sixty-six entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific rail road in California to Portland in Oregon" and the acts supplemental thereto and amendatory thereof, and to deliver and furnish to said party of the second part any and all papers documents, maps, surveys and muniments of title, relating to said lands and premises whatsoever in their possession or under their control, which may be necessary to enable the party of the second part to make good and sufficient description thereof and title thereto, It is also further stipulated, covenanted and agreed by and between the parties of the first and second parts hereto that the said parties of the first part having delivered and duly assigned as the case may require to the party of the second part at San Francisco, California, all and singular the surveys, plots, patents, and other evidence and muniments of title relating to and designating said lands as the same may be from time to time issued by the United States to said Oregon & California Rail Road Company, under the Acts of Congress already passed or which may be hereafter passed in aid thereof or supplemental thereto the said party of the second part may then or at any time before the expiration of ten years from the day of the delivery and assigning to said party of the second part of the said documentary evidence

as aforesaid relating to said lands and premises pay for the same at the said price of one and one quarter dollars per acre without interest on the said price of the same for said period of ten years IF however said lands are for any cause not all paid for within ten years from the time the said surveys, plots, patents and other evidences and muniments of title are delivered by the said party of the first part to the said party of the second part then upon the purchase price herein agreed to be paid, the parties of the first part shall charge and the party of the second part shall pay interest at the rate of six per cent per annum for all the time after ten years that the same shall not be paid for as hereinbefore provided. It being the intent of this stipulation and covenant that the party of the second part shall have ten years within which to make sales of lands hereby conveyed and realize therefrom without paying interest on the purchase price of said lands for that time, but after said lands shall have been at its disposal under this Indenture for ten years it shall pay to the parties of the first part six per cent per annum on the purchase price of such lands as may not for any reason have been sold by said party of the second part within such period of ten years, AND the said party of the third part hath covenanted and agreed and doth hereby covenant and agree to and with the parties of the first part and the party of the second part that it has duly authorized, empowered directed and required the said parties of the first part as Trustees as aforesaid to make, execute and deliver this Indenture to the said party of the second

part in manner and form and upon the terms and conditions hereinbefore expressed. And the said party of the second part by and through its president he being thereunto and for that purpose duly authorized and empowered this sale and conveyance and every part thereof hath fully and completely ratified, approved and confirmed and by these presents doth fully ratify approve and confirm the same. In witness whereof the said parties of the first part have hereunto set their respective hands and seals; And the said party of the second part hath also caused these presents to be subscribed by its President and its Corporate seal to be hereto affixed by its secretary, by resolution of its Board of Trustees the day and year first above written; And the said party of the third part hath also caused the same to be subscribed by its president and its corporate seal to be hereto affixed by its secretary, by resolution of the Board of Trustees the day and year first above written.

Therefore Resolved: That the sale and transfer made by said Milton S. Latham, Faxon D. Atherton and William Norris to said "The European and Oregon Land Company" of all the lands, franchises, rights and interests specified in the indenture of which the foregoing is a copy—and the same are hereby approved, ratified and confirmed and the conveyance thereof—of which the foregoing is a copy—from said Milton S. Latham, Faxon D. Atherton and William Norris to said "The European and Oregon Land Company" is hereby approved, ratified and confirmed and further,

Resolved: That the President and Secretary of this

Company be and they are hereby authorized and directed to execute and acknowledge in the name of this Company and under its corporate seal the said Deed of Conveyance to the said "The European and Oregon Land Company" in the form and to the effect and for the purposes as set forth and stipulated in the hereinbefore recited copy blanks for dates in which to be filled at time of and with date of executing same.

On motion of Dr. Hawthorn, seconded by Mr. Lewis, the foregoing Preamble and Resolution were unanimously approved and adopted, and ordered to be spread upon the Journal of Proceedings of this Board. No further business being before the Board Mr. Weidler moved to adjourn, seconded by Mr. Crawford and carried by unananimus vote.

The President then declared the Board adjourned.

W. L. HALSEY, Vice President

A. G. CUNNINGHAM, Secy.

Office of the O. and C. R. R. Co.,

Portland, Oregon, Wednesday, Jany. 11th, 1871.

No quorum being present no meeting was held this day.

A. G. CUNNINGHAM, Secy.

Office of the O. and C. R. R. Co.,

Portland, Or. Wednesday, Feby. 8th, 1871.

There not being a quorum present no meeting was held this day.

A. G. CUNNINGHAM, Secy.

Office of the O. and C. R. R. Co.,

Portland, Or. Wednesday, March 8th, 1871.

The President and V. President being absent no meeting was held this day.

A. G. CUNNINGHAM, Secy.



